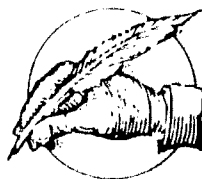


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Georto, Inc. v. William Gateman, et al.

Transcript of the Testimony of:

Stephen McIntyre

December 1, 2005

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Elizabeth M. Afonso 1-17536

Stephen McIntyre 12-1-2005
Georto, Inc. v. William Gateman, et al.

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF MASSACHUSETTS
3 CIVIL ACTION NO.: 04-11730 NG
4

5 * * * * *

6 GEORTO, INC.,
7 Plaintiff,

8 vs.

9 WILLIAM GATEMAN, INDIVIDUALLY and as
10 TRUSTEE OF 200 UNION STREET REALTY
11 TRUST,

12 Defendant,
13 Third Party Plaintiff, and
14 Third Party Defendant-in-
15 Counterclaim

16 ROBERTS CORPORATION

17 Third Party Defendant,
18 and Third Party Plaintiff-
19 in-Counterclaim.

20 * * * * *

21 DEPOSITION OF STEVEN MCINTYRE, taken on
22 behalf of the defendants, pursuant to the
23 Massachusetts Rules of Civil Procedure, before
24 Elizabeth M. Afonso, Professional Shorthand
Reporter and Notary Public within and for the
Commonwealth of Massachusetts, at the law office of
James S. Robbins, Six Beacon Street, Boston,
Massachusetts, commencing at 10:40 a.m. on
Thursday, December 1, 2005.

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2	1 APPEARANCES:	4	1 (Exhibit No. 1, Plans, marked for
2		2	2 identification.)
3	3 LYNCH, BREWER, HOFFMAN & FINK, LLP	3	
4	4 by Dale C. Kerester, Esquire	4	4 PROCEEDINGS
5	5 101 Federal Street	5	
6	6 Boston, Massachusetts 02110	6	6 STEVEN MCINTYRE, having been first duly
7	7 617.951.1821	7	7 sworn, was examined and testified as follows:
8	8 On behalf of the plaintiff	8	
9		9	9 MR. ROBBINS: Counsel have agreed on
10	10 LAW OFFICE OF JAMES S. ROBBINS	10	10 continuing the same stipulations that we have used
11	11 by James S. Robbins, Esquire	11	11 in other depositions to wit that we will reserve
12	12 6 Beacon Street, Suite 1100	12	12 all motions to strike and all objections except as
13	13 Boston, Massachusetts 02108	13	13 to the form of the question until the time of
14	14 617.227.7541	14	14 trial. Everyone in agreement?
15	15 On behalf of William Gateman	15	15 MS. ENGBERG: Yes.
16		16	16 MR. KERESTER: YES.
17	17 LAWSON & WEITZEN, LLP	17	
18	18 by Kristina A. Engberg, Esquire	18	18 EXAMINATION
19	19 88 Black Falcon Avenue	19	19 BY MR. ROBBINS:
20	20 Boston, Massachusetts 02210	20	20 Q. Would you please state your full name and address.
21	21 617.439.4990	21	21 A. Steven John McIntyre, 299 Long Cabin Road, Arundel,
22	22 On behalf of Roberts Corporation	22	22 Maine.
23		23	23 Q. Is your first name spelled with a "V" or a "PH"?
24		24	24 A. "V".
3	1 INDEX	5	1 Q. Mr. McIntyre, my name is James Robbins as I
2		2	2 indicated before to you. I'm going to ask you some
3	3 DEPONENT PAGE	3	3 questions today and perhaps the other lawyers will
4		4	4 also be asking you some questions today.
5	5 STEVEN MCINTYRE	5	5 If you do not understand my question,
6		6	6 just say so, okay, and I'll rephrase it so that you
7	7 EXAMINATION BY MR. ROBBINS 4, 132	7	7 do understand it.
8		8	8 We all want, in terms of your answers,
9	9 EXAMINATION BY MR. KERESTER 91, 137	9	9 that you speak them verbally, so that the
10		10	10 stenographer can type your words as opposed to a
11	11 EXHIBITS	11	11 head shake, and we want you to answer from what you
12		12	12 know of your own knowledge, what you saw, observed,
13	13 NO. DESCRIPTION PAGE	13	13 touched, et cetera; not what you guess, what you
14		14	14 would fill in with, assume, had to be. We just
15	15 58 Plans 4	15	15 want to know what you saw and what you know, okay?
16		16	16 A. Mm-hmm.
17		17	17 Q. Okay. If you need to a take a break, just let me
18		18	18 know.
19		19	19 What's your date of birth, please.
20		20	20 A. 9/10/71.
21		21	21 Q. Are you married or single?
22		22	22 A. Single.
23		23	23 Q. Okay. How far in formal school did you go? Did
24	24 (Exhibit retained by counsel.)	24	24 you complete high school?

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<p>1 A. The eleventh grade. 2 Q. Eleventh grade. And where was that? 3 A. Biddeford High School. 4 Q. Biddeford? 5 A. Yep. 6 Q. Okay. And after leaving Biddeford High School, did 7 you begin some work? 8 A. Yes. 9 Q. Okay. Where was that, the first place? When I say 10 "first place," I'm interested in anything that you 11 were there, you know, more than a few weeks? 12 A. I worked at A.L. Plourde Construction. 13 Q. A.L. plug? 14 A. Plourde, P-L-O-U-R-D-E. 15 Q. Okay. Construction. 16 Where are they located? 17 A. Guinea Road in Biddeford, Maine. 18 Q. And what did you do for them? 19 A. Construction laborer. 20 Q. How long did you work for them? 21 A. Maybe a year. 22 Q. Okay. What was your next job? 23 A. I worked at Spencer Press in Wells, Maine for a 24 period of about two years.</p>	<p>6 8 1 Q. As a foreman -- let me back up, as a carpenter for 2 six or seven years, that would put you someplace in 3 the middle of the '90s when you would have started 4 as foreman for them; is that about right? 5 A. Yeah. 6 Q. If I add six or seven to those numbers, it would be 7 -- 8 A. I've been with PM Construction for a total of 9 16 years. 10 Q. And as a foreman for them for the three years, what 11 were your duties as a foreman? 12 A. Basically the same as a superintendent, just 13 smaller jobs. If there was a larger job, then you 14 would be under a superintendent. 15 Q. Okay. So as a foreman, what were the things that 16 you did on a smaller job? What were your daily 17 activities that you would do, and who would you 18 supervise and so forth? 19 A. Scheduling. 20 Q. Scheduling. 21 A. Pretty much anything, day-to-day operations on a 22 job. It would just be a smaller magnitude job, 23 maybe a remodel. 24 Q. All right. Besides scheduling, in other words, you</p>
<p>7 1 Q. In Wells? 2 A. Yes. 3 Q. And what did you do for Spencer Press? 4 A. I was a press packer. 5 Q. Which means what? What kind of work did you do for 6 them? 7 A. Pretty much took books off of an assembly line and 8 put them on a pallet. 9 Q. Okay. After Spencer Press? 10 A. I've been with PM Construction. 11 Q. And when did you start with them? What year would 12 that have been? 13 A. '87, '88. 14 Q. What kind of work did you first start doing for 15 them? 16 A. I was hired on as a carpenter. 17 Q. Okay. And how long did you work as a carpenter for 18 them? 19 A. Six or seven years. 20 Q. And after that, what was the next position you had 21 with them? 22 A. I was a foreman for a period of about three years. 23 Q. And after that what did you do for them? 24 A. A project superintendent since.</p>	<p>9 1 would be supervising other people working on that 2 job? 3 A. Yes. All subcontractors, yes. If there was not a 4 superintendent on site, then the foreman would take 5 care of all subcontractors, all of his general 6 labor in house. 7 Q. Again, as foreman, when you were working there, PM 8 would hire subcontractors to come in and do 9 different aspects of the job? 10 A. Yes. 11 Q. Okay. Do they currently do that, still hire people 12 to come in and do other aspects of the job? 13 A. Yes. 14 Q. Okay. As you began as a superintendent, that would 15 have been approximately when? 16 A. Six, seven years ago. I'm not sure of the exact 17 date. 18 Q. All right. And as a superintendent, are you the 19 highest ranking person on site daily? 20 A. Yes. 21 Q. Okay. And what are the kinds of services that -- 22 or people that PM provides on these jobs that 23 you're the superintendent of? What do they provide 24 themselves, and what do they outsource, where they</p>

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<p>10)</p> <p>1 bring somebody else in?</p> <p>2 A. We generally do general carpentry, blocking, very</p> <p>3 little framing. Mostly we subcontract framing,</p> <p>4 foundations, excavation, basically about 90 percent</p> <p>5 of the total work.</p> <p>6 Q. Is subbed out?</p> <p>7 A. Is subcontracted, yes.</p> <p>8 Q. Okay. But PM provides kind of overall management</p> <p>9 and coordination of these services?</p> <p>10 A. Yes. As a general contractor basically would.</p> <p>11 Q. Would as a general contractor?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. When you're on a particular site, are there</p> <p>14 other PM employees who are on that site?</p> <p>15 A. Sometimes, not always.</p> <p>16 Q. Okay. When there are other PM employees, what</p> <p>17 kinds of jobs do they do?</p> <p>18 A. Basically clean up whatever we cannot sub out</p> <p>19 basically. Sometimes if the job's too small for</p> <p>20 the carpentry part of the contract, which would be</p> <p>21 the blocking or anything wood and the steel frame</p> <p>22 they would take that. Very little basically.</p> <p>23 Clean up a lot.</p> <p>24 Q. So it's kind of what's typically labor stuff?</p>	<p>12</p> <p>1 A. Yes.</p> <p>2 Q. Okay. What is the name of the project?</p> <p>3 A. I'm at a new Hannaford Brothers in Alton, New</p> <p>4 Hampshire.</p> <p>5 Q. In Alton?</p> <p>6 A. Yeah. A-L-T-O-N.</p> <p>7 Q. Thank you.</p> <p>8 And what's being built for new Hannaford</p> <p>9 Brothers?</p> <p>10 A. It is a 38,000-square foot supermarket.</p> <p>11 Q. And what's the dollar value of that contract?</p> <p>12 A. I believe 2.1 million.</p> <p>13 Q. Are you superintending any other project currently?</p> <p>14 A. No.</p> <p>15 Q. Okay. Next before this Hannaford Brothers Store,</p> <p>16 what was the project that you were superintendent?</p> <p>17 A. I was doing a -- I believe it was a Clipper Mart in</p> <p>18 Saco, Maine.</p> <p>19 Q. Clipper?</p> <p>20 A. Yeah.</p> <p>21 Q. C-L-I-P-P-E-R?</p> <p>22 A. Yep.</p> <p>23 Q. And the second word is "Mark"?</p> <p>24 A. Mart.</p>
<p>11</p> <p>1 A. Yes.</p> <p>2 Q. Typically labor work?</p> <p>3 A. Yeah.</p> <p>4 Q. On how many jobs have you served as superintendent</p> <p>5 for PM Construction? Your best memory, your best</p> <p>6 estimate?</p> <p>7 A. Do between -- depending on the size of the project,</p> <p>8 anywhere from two to four a year.</p> <p>9 Q. All right. And are there other employees of PM</p> <p>10 Construction who also serve as superintendents?</p> <p>11 A. Yes.</p> <p>12 Q. How many other employees?</p> <p>13 A. I believe we have ten superintendents in all</p> <p>14 including me.</p> <p>15 Q. Now, when you said "two to four jobs a year," you</p> <p>16 were talking about your work was two to four jobs a</p> <p>17 year?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. So it's not obviously two or four jobs</p> <p>20 spread over ten superintendents?</p> <p>21 A. Oh, no, no. That's each superintendent.</p> <p>22 Q. Each superintendent. Okay.</p> <p>23 Are you currently working as a</p> <p>24 superintendent for PM on a project?</p>	<p>13</p> <p>1 Q. Mart?</p> <p>2 A. M-A-R-T.</p> <p>3 Q. And, I'm sorry, where was that?</p> <p>4 A. Saco, Maine, Route 1 in Saco, Maine.</p> <p>5 Q. And this was like another supermarket?</p> <p>6 A. This was a convenient store/gas station.</p> <p>7 Q. Okay. And what was the approximate value of that</p> <p>8 contract or project?</p> <p>9 A. 1.5 million, I believe.</p> <p>10 Q. Okay. Prior to that one, where were you?</p> <p>11 A. Prior to that, I believe I was filling in on</p> <p>12 another job with another superintendent in</p> <p>13 Falmouth, Maine.</p> <p>14 Q. What was the project?</p> <p>15 A. It was a Shaw's Supermarket?</p> <p>16 Q. Now, when you say "filling in," were you working</p> <p>17 together with another superintendent on that</p> <p>18 project?</p> <p>19 A. Yes.</p> <p>20 Q. So the two of you were working kind of parallel</p> <p>21 together?</p> <p>22 A. Yes.</p> <p>23 Q. What was the approximate value of that project?</p> <p>24 A. That one I believe was 4 million.</p>

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<p>14</p> <p>1 Q. Okay. And prior to that?</p> <p>2 A. Prior to that I think I was at Wicks Lumber in</p> <p>3 Portland, Maine doing a renovation.</p> <p>4 Q. And what was the value of that project?</p> <p>5 A. I believe around 300,000.</p> <p>6 Q. Okay. Prior to that one -- and you were the</p> <p>7 superintendent on that?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. And prior to Wicks?</p> <p>10 A. Prior to Wicks, I believe it was another Clipper</p> <p>11 Mart in Brunswick, Maine.</p> <p>12 Q. Okay. And the value of that project?</p> <p>13 A. Around one to 1.5 million.</p> <p>14 Q. Now, I haven't been asking you something I should</p> <p>15 have been asking you, which is to give me some</p> <p>16 sense of periods of time, dates.</p> <p>17 The Hannaford Brothers Supermarket</p> <p>18 project, when did that begin?</p> <p>19 A. That began, I believe, eight weeks ago.</p> <p>20 Q. So September-ish?</p> <p>21 A. Yes.</p> <p>22 Q. Of this year?</p> <p>23 A. Yes.</p> <p>24 Q. Do you recall the dates for the Clipper Mart in</p>	<p>16</p> <p>1 Q. All right. So that's maybe a little out of order?</p> <p>2 A. Yes, it is.</p> <p>3 Q. Okay. So which one do you think was before</p> <p>4 Hannaford? We have Shaw's Supermarket, Wicks</p> <p>5 Lumber and then --</p> <p>6 A. Shaw's.</p> <p>7 Q. Shaw's?</p> <p>8 A. Shaw's was the last one.</p> <p>9 Q. Okay. The last one before?</p> <p>10 A. Yes. Then it went Wicks, then Clipper Mart.</p> <p>11 Q. And then the Clipper Mart in Brunswick?</p> <p>12 A. The Clipper Mart in Saco, and then the Clipper Mart</p> <p>13 in Brunswick.</p> <p>14 Q. Okay. So when did the Shaw's project, what period</p> <p>15 of time was that, the Falmouth?</p> <p>16 A. That was mid summer, this summer.</p> <p>17 Q. Mid summer of this year, 2005?</p> <p>18 A. Yes.</p> <p>19 Q. Some months ago?</p> <p>20 A. Yes.</p> <p>21 Q. And the Wicks Lumber was approximately when?</p> <p>22 A. That was the end of winter, the beginning of the</p> <p>23 summer of this year.</p> <p>24 Q. 2005?</p>
<p>15</p> <p>1 Saco?</p> <p>2 A. I don't recall the dates. It was summertime.</p> <p>3 Q. Roughly, how many months or years was that --</p> <p>4 A. Generally, the Clipper Marts they run anywhere from</p> <p>5 16 to 18 weeks.</p> <p>6 Q. That's fast.</p> <p>7 And that you believe was last summer of</p> <p>8 '05 or of '04, did you say?</p> <p>9 A. It was towards the end of the summer.</p> <p>10 Q. Of which year -- this year or last year?</p> <p>11 A. It was this year.</p> <p>12 Q. '05? That would have been, like, right before the</p> <p>13 September start on the Hannaford if it was this</p> <p>14 year.</p> <p>15 A. No. It was last year then. Generally, I really</p> <p>16 don't know the date, you know what I mean?</p> <p>17 Q. But it was the end of a summer?</p> <p>18 A. Yes, it was.</p> <p>19 Q. Do you remember if it was much of a break between</p> <p>20 it ending and Hannaford beginning?</p> <p>21 A. That Clipper Mart was done before the Wicks</p> <p>22 building.</p> <p>23 Q. Okay. That's the Saco one?</p> <p>24 A. Yeah.</p>	<p>17</p> <p>1 A. (No response.)</p> <p>2 Q. Yes?</p> <p>3 A. Around there, yes.</p> <p>4 Q. And then the Saco Clipper Mart?</p> <p>5 A. Saco Clipper Mart began in late summer and finished</p> <p>6 in the beginning of winter.</p> <p>7 Q. And that would have been last year, 2004?</p> <p>8 A. Yes.</p> <p>9 Q. And then I take it the Brunswick, Maine Clipper</p> <p>10 Mart would have happened even earlier than that.</p> <p>11 So when was the Brunswick Clipper Mart? You know</p> <p>12 the Saco one was toward the end of the summer into</p> <p>13 the winter of 2004.</p> <p>14 A. The Brunswick Clipper Mart, I believe, I did before</p> <p>15 I went to Lynn for the Aaron's Furniture. I did a</p> <p>16 job before I went to Lynn, Mass to do Aaron's</p> <p>17 Furniture.</p> <p>18 Q. Okay. Before Lynn, Mass. So we have another one</p> <p>19 that will fit into the sequence. The next</p> <p>20 one would have been the Lynn project?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. And the Lynn project was what kind of</p> <p>23 project? What did you have to do?</p> <p>24 A. I forget the square footage. It was a steel</p>

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18		20	
1	building package, retail store. I think it was	1	site to discuss scheduling.
2	around 4,000 square feet, maybe a little bigger.	2	Q. Okay. Who was the excavating contractor on that
3	Q. And that was in Lynn, Massachusetts?	3	project?
4	A. In Lynn, Mass., yes.	4	A. It was Thomas Mattuchio, Incorporated. I believe it
5	Q. All right. Was that the address generally known as	5	was.
6	200 Union Street in Lynn? Does that ring a bell?	6	Q. Okay. And do you know how come he was chosen as
7	A. Yes. My plans, I believe, said 210 Union Street.	7	the superintendent? Had you worked with him
8	But I believe the town gave it an official address	8	before?
9	of 200.	9	A. I had not. All the hiring of subcontractors is
10	Q. Okay. When you're talking about plans, I just want	10	done through our project managers.
11	to be talking about the same thing.	11	Q. Okay. Who was the project manager on this project?
12	Plans which we marked in Phil	12	A. George LaPlume.
13	as Exhibit 51. I just want to	13	Q. And does he still work for PM?
14	clarify -- when you're referring to plans,	14	A. Yes.
15	is this a copy of the plans? Take your time to	15	Q. Okay. So you were told Mattuchio was the
16	get it.	16	excavation person that you were going to be working
17	A.	17	with on this?
18	Exhibit 51, when you say "plans,"	18	A. Yes.
19	that's what you were given to --	19	Q. And you met with him at the site?
20	A. Blueprints.	20	A. Yes.
21	Q. Blueprints to work on site.	21	Q. Okay. And when you say "three days before," he
22	All right. When did you first go to the	22	came to the site; is that what you're saying --
23	Lynn site?	23	A. Yes.
24	A. I don't remember the exact date.	24	Q. Would you have met with him then?
19		21	
1	Q. Okay. When generally was the work that you did	1	A. We had both met on site.
2	done at the Lynn site? What was the period of	2	Q. Both met on site?
3	time?	3	A. Yes.
4	A. The period of time from start to finish?	4	Q. Was anybody else with you when you met on site with
5	Q. Yes, please.	5	him?
6	A. I would say around 16 to 18 weeks.	6	A. No.
7	Q. Okay. That's the duration, I got you. But when	7	Q. Okay. So you meet on site with him, what did you
8	did that start and when did you finish?	8	discuss with him about the work that he needed to
9	A. That started, I believe, right in the spring. It	9	do?
10	would probably be '04. I'm not exactly sure. I	10	A. We discussed site protection as far as fencing
11	know it was around springtime.	11	around the site. His general plan on how he was
12	Q. Okay. But you're sure it was 2004, which would	12	going to excavate, and when he could actually be on
13	have basically put it roughly two years ago?	13	site to excavate.
14	A. Yes. It's been about two years since I've been in	14	Q. Okay. There were certain requirements that these
15	Lynn.	15	plans would have told you for what needed to be
16	Q. All right. And when did you finish?	16	excavated; is that right?
17	A. We finished late summer.	17	A. Yes.
18	Q. Okay. Did you ever go to the site before you	18	Q. Okay. Could you find in these plans what it was
19	started work?	19	that told you what you needed to ask Mattuchio to
20	A. I went to the site --	20	do, or was there something specific in these plans
21	Q. You start work proper?	21	that you can point to?
22	A. I went to the site to look at the site, I believe	22	A. Basically the -- now what was that question again?
23	it was three days before I had an excavating	23	Q. Right. In order for you to talk to Mattuchio and,
24	contractor on site, where I had met with him on	24	for that matter getting a pricing out of Mattuchio,

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<p>22</p> <p>1 you had to tell him what work needed to be done?</p> <p>2 A. Yes.</p> <p>3 Q. You would have learned that from where on these</p> <p>4 plans?</p> <p>5 A. That was already done and taken care of through our</p> <p>6 project managers. He had already been contracted</p> <p>7 before he arrived on site.</p> <p>8 Q. Okay. Do any of these plans that you have in front</p> <p>9 of you, these blueprints, do any of them show what</p> <p>10 the initial understanding was of what needed to be</p> <p>11 excavated?</p> <p>12 A. Yes.</p> <p>13 Q. That's what I'm trying to find out. You're more</p> <p>14 familiar with reading these blueprints than I am.</p> <p>15 A. Basically, the footprint of the building would be</p> <p>16 excavated.</p> <p>17 Q. Does that have a sheet page that I can remember to</p> <p>18 look these up? So there's a footprint page.</p> <p>19 A. Sheet S1.</p> <p>20 Q. Sheet S1. Okay. Great. Anything else?</p> <p>21 A. This total footprint would be excavated.</p> <p>22 Q. So you're, again, talking about Sheet S1, and</p> <p>23 you're in the upper left corner, and you're talking</p> <p>24 about the rectangle that's there, and running your</p>	<p>24</p> <p>1 A. Basically, he would have dug probably at least one</p> <p>2 foot on either side of the dotted lines just for</p> <p>3 the foundation.</p> <p>4 Q. Okay. So these dotted lines that are -- what are</p> <p>5 the dotted lines actually?</p> <p>6 A. Those are footings.</p> <p>7 Q. That's the footings?</p> <p>8 A. Yes.</p> <p>9 Q. And then what are the boxes?</p> <p>10 A. The boxes are an actual pier. It's a wider spread</p> <p>11 footing.</p> <p>12 Q. A wider spread footing. Okay.</p> <p>13 A. It bears more weight.</p> <p>14 Q. Okay. When it's not the box, the two dotted lines</p> <p>15 that are on either side of the parameter of the</p> <p>16 building, is my understanding correct that what</p> <p>17 that's showing is that those foundation -- that</p> <p>18 foundation wall has a foot at the bottom of it, a</p> <p>19 widening at the bottom of it?</p> <p>20 A. Yes. That's the dotted lines that you're seeing</p> <p>21 right here.</p> <p>22 Q. Okay. So it's the maximum width of this kind of</p> <p>23 wide foot block at the bottom?</p> <p>24 A. Yes. The wider parts is at the pier locations.</p>
<p>23</p> <p>1 finger around the parameter --</p> <p>2 A. Yes. Basically the foundation of the basement</p> <p>3 foundation.</p> <p>4 And then also to be excavated would be</p> <p>5 any parking lot areas, any poured concrete sidewalk</p> <p>6 areas, any catch basins for storm drainage.</p> <p>7 Q. Okay. At least with regard to the building itself,</p> <p>8 what had to be excavated, would be shown on this</p> <p>9 Sheet S1, this one here?</p> <p>10 A. For the general building, yes.</p> <p>11 Q. For the general building.</p> <p>12 A. For the foundation of the building --</p> <p>13 Q. Forgetting about the parking lot and forgetting</p> <p>14 about those other items that you mentioned?</p> <p>15 A. Yeah.</p> <p>16 Q. Now, let me make sure I understand. The foundation</p> <p>17 for the building, as understood here, was going to</p> <p>18 be -- how was that going to be excavated for this</p> <p>19 building? This is in the beginning. I know things</p> <p>20 may have changed, but in the beginning, what was</p> <p>21 Mattuchio suppose to do with regard to the</p> <p>22 foundation?</p> <p>23 A. Dig a big hole, dig a trench.</p> <p>24 Q. What did he have to do?</p>	<p>25</p> <p>1 Q. Okay. And that's shown on Sheet S2, these</p> <p>2 footings?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. Great. Thank you.</p> <p>5 Now back to what you were saying. He</p> <p>6 would have had to -- was the plan that he would dig</p> <p>7 around -- he would dig, what, a trench or a hole?</p> <p>8 Well, I guess it's not very technical. He would</p> <p>9 dig a trench?</p> <p>10 A. A wide trench, yes.</p> <p>11 Q. A wide trench. Okay. And you're saying that it</p> <p>12 would have needed to have been at least a foot</p> <p>13 wider than the dotted lines shown on page S1 in the</p> <p>14 upper left corner around the building?</p> <p>15 A. Yes. That would be at the minimum.</p> <p>16 Q. At the minimum?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. Is there anything that he had to dig within</p> <p>19 the interior of the building?</p> <p>20 A. Yes. Two interior column pads.</p> <p>21 Q. Those things that are marked F6?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. And what were they for?</p> <p>24 A. Those are for the interior columns.</p>

7 (Pages 22 to 25)

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<p>26</p> <p>1 Q. And so once the foundation -- once the concrete pad</p> <p>2 was put in -- well, strike that.</p> <p>3 There would be columns on those two pads</p> <p>4 to help support the building itself?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. Are these the only two interior columns that</p> <p>7 there were?</p> <p>8 A. Yes. That were not connected to the foundation,</p> <p>9 yes.</p> <p>10 Q. They were not connected to the foundation.</p> <p>11 Okay. At some point did he begin work?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. Were you there when he first began his work?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. Now, I premarked, and both lawyers have</p> <p>16 copies of this, an exhibit that we marked as</p> <p>17 Exhibit 58, and it's a plan -- I'll represent to</p> <p>18 you it's a plan. I'm just going to ask you if you</p> <p>19 recognize what it shows?</p> <p>20 A. Yes, I do.</p> <p>21 Q. Okay. Is that a plan of the property on which the</p> <p>22 Aaron Store was ultimately built?</p> <p>23 A. That's a copy of the plan with -- it's a copy of</p> <p>24 the plan with what was existing on site that I drew</p>	<p>28</p> <p>1 A. Yes.</p> <p>2 Q. Okay. Do you know when you made this drawing or</p> <p>3 added these foundation wall pieces to this plan?</p> <p>4 A. I don't have an exact date, no.</p> <p>5 Q. Okay. Did you know that those foundation walls</p> <p>6 were present when you first went to the site?</p> <p>7 A. No, I did not.</p> <p>8 Q. No one had told you about that, that they were</p> <p>9 there?</p> <p>10 A. No.</p> <p>11 Q. Now, we have a variety of photographs that may or</p> <p>12 may not -- well, we may or may not know the exact</p> <p>13 date when they were taken, and I'm going to need to</p> <p>14 ask you questions about the different photographs</p> <p>15 to see what you may know about any of them, okay?</p> <p>16 They have numbers, it may be a little laborious,</p> <p>17 but bear with us.</p> <p>18 I'm going to show you something that's</p> <p>19 been marked as Exhibit 34. Have you ever seen</p> <p>20 either of those two photographs? I'm not asking</p> <p>21 have you seen what it shows, but just have you ever</p> <p>22 seen either of those photographs?</p> <p>23 A. No.</p> <p>24 Q. Okay. And you didn't take those pictures</p>
<p>27</p> <p>1 in.</p> <p>2 Q. Okay. So you've drawn in some shapes?</p> <p>3 A. I drew in existing foundation walls that were</p> <p>4 buried on site.</p> <p>5 Q. Okay. And you put the little crosshatch in there?</p> <p>6 A. Exactly.</p> <p>7 Q. So those are yours?</p> <p>8 A. Yes.</p> <p>9 Q. There are some handwritten notes on this otherwise</p> <p>10 machine drawn plan. Are those in your handwriting,</p> <p>11 or are any of them in your handwriting? Are those</p> <p>12 any of your notes?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. Since I've asked you a sloppy question.</p> <p>15 Which of those handwritings are yours?</p> <p>16 A. All of these detailed ones with any inch or foot</p> <p>17 increments on the hashed outlines.</p> <p>18 Q. Okay. How about the one with an arrow that says,</p> <p>19 "foundation of new building"?</p> <p>20 A. That is not mine.</p> <p>21 Q. That is not yours.</p> <p>22 Okay. But the pieces that are basically</p> <p>23 the notes that are basically pertained to those</p> <p>24 foundation walls are yours?</p>	<p>29</p> <p>1 obviously?</p> <p>2 A. No, I did not.</p> <p>3 Q. Okay. Thank you.</p> <p>4 Here is another set of three photographs</p> <p>5 which were marked Exhibit 35. Have you ever seen</p> <p>6 those photographs before?</p> <p>7 A. No, I have not.</p> <p>8 Q. Okay. And you didn't take those pictures?</p> <p>9 A. No, I did not.</p> <p>10 Q. Okay. Let me go back to 34 for a second. Have you</p> <p>11 ever seen -- do you recognize what is shown in</p> <p>12 Exhibit 34, which has writings at the bottom</p> <p>13 saying, "Lynn, 200 Union, Front A."</p> <p>14 Have you ever seen that property before?</p> <p>15 A. Yes, I have.</p> <p>16 Q. Okay. Did you ever see it looking like that?</p> <p>17 A. Yes, I have.</p> <p>18 Q. Okay. When did you see it looking like that?</p> <p>19 A. Right at the beginning of the project.</p> <p>20 Q. Okay. So does that look like a fair representation</p> <p>21 of what the piece of property looked like to you at</p> <p>22 the beginning of the project?</p> <p>23 A. At the -- when we actually came back -- yes, that</p> <p>24 does, because the railroad ties are in the back,</p>

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<p>30</p> <p>1 so, yes, that is right at the beginning of the 2 project. 3 Q. Okay. So kind of to anchor things, we know this is 4 what it looked like in the beginning; is that 5 right? 6 A. Yes. 7 Q. Okay. I'd like to show you another exhibit that's 8 marked as Exhibit 41, and ask if you've ever seen 9 that picture before? 10 A. No, I haven't seen this picture. Pretty much you 11 just showed it to me but -- 12 Q. Okay. No. I mean, other than my giving it to you 13 right now? 14 A. No, I haven't. 15 Q. It wasn't a trick question. 16 A. I have not seen that picture, no. 17 Q. Okay. Have you ever seen the -- do you know what 18 it shows? 19 A. Yes. 20 Q. Okay. That's the 200 Union Street property? 21 A. That looks as though you're taking a picture from 22 standing on the sidewalk. 23 Q. Okay. And does that look like what it looked like 24 to you when you first got to the site?</p>	<p>32</p> <p>1 Q. All right. Roughly how long after he started doing 2 his work did that first happen? 3 A. Maybe a day. 4 Q. All right. But you don't remember exactly where he 5 was digging? 6 A. I don't. I believe it was one of these front 7 corners. 8 Q. One of the front corners on Union Street? 9 A. Yes. I think it was closer to the Dollar Store 10 side, I believe. 11 Q. Closer to the Dollar Store. 12 What was it that he brought to your 13 attention? 14 A. He brought to my attention what looked like burnt 15 construction debris. 16 Q. What did it look like? Did you look at it? 17 A. Yes. 18 Q. Okay. What did it look like? 19 A. It had bricks, pipes, wiring, burnt jars, wood. It 20 looked like construction demo. 21 Q. Okay. And this was within a day or so of -- 22 A. Yes. 23 Q. -- him first starting his work? 24 A. Yes.</p>
<p>31</p> <p>1 A. Yes. 2 Q. Okay. That's fair and accurate -- 3 A. Yes. 4 Q. -- as far as we're looking? 5 Okay. When Mattuchio first started doing 6 his excavating, do you know where he started 7 initially, and I'm going to ask you to look at this 8 Exhibit 58 if it is of help to you, because I'd 9 like to locate it. 10 Where did he start doing his digging? 11 A. I'd like to say on the front wall, but I don't 12 remember exactly whether it was the side wall or 13 the front wall. I know it was not the back wall. 14 Q. Okay. And the front wall would be the one closest 15 to Union Street? 16 A. Union Street, yes. 17 Q. And were you present when he first started? 18 A. Yes. 19 Q. Okay. And at some point, how far did he get in -- 20 strike that. 21 At some point in his digging, did he 22 discover something that he needed to bring to your 23 attention? 24 A. Yes.</p>	<p>33</p> <p>1 Q. Okay. And what happened after he brought this to 2 your attention and you looked at it, what then 3 happened? What did you then do? 4 A. I told him to excavate the junk material out. Junk 5 material being the construction debris or demo. 6 Q. When you say "the junk material," just so the 7 record's clear, you're talking about that stuff you 8 just named? 9 A. Yes. 10 Q. Okay. The junk material out, and do what with it? 11 A. I had him stage it on site. 12 Q. And when you say "stage it on site" -- 13 A. Pile it up. 14 Q. Pile it up on a certain location? 15 A. Yes. 16 Q. Okay. And was he to continue digging this 17 parameter trench -- the foundation trench? 18 A. He was to continue excavating where he was, where 19 he had found the debris, until he came into clean 20 material. 21 Q. So you told him to stay in either the hole that he 22 had started, keep digging downward until he found 23 no more of this what you call "junk"? 24 A. Yes.</p>

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34		36	
1	Q. Okay. He wasn't moving forward and continuing to	1	digging in that hole, that particular hole?
2	dig further --	2	A. Yes.
3	A. No.	3	Q. Okay. What caused you to say, "Stop digging in
4	-- he was just staying where he was?	4	this particular hole," at that point?
5	A. The site was too tight to do that. You basically	5	A. Well, there was no end insight of the junk in the
6	had to dig your way out of the site.	6	ground. I didn't really want to open up a whole --
7	Q. Okay. So he continued to dig down where he was.	7	you know, it could be 50 feet deep for all I know.
8	You were there while he was doing this?	8	Q. Okay. So it wasn't as if you were no longer seeing
9	A. Yes.	9	any material that you had a problem with, it was
10	Q. Okay. And did he at some point come to where he	10	just that that was deep enough at that point, and
11	found none of this material?	11	you wanted him to test other locations?
12	MR. KERESTER: Objection to form.	12	A. Yes.
13	Q. At some point did he stop digging down, because he	13	Q. Okay. And did he do other locations?
14	found no more of what you call "junk"?	14	A. Yes, he did.
15	A. He stopped digging at approximately, I would say,	15	Q. Okay. I'd like to ask you to look on this plan and
16	eight to ten feet from the existing grade that was	16	tell me what other locations generally, as best you
17	there.	17	can remember, where he --
18	Q. When you say "the existing grade," you mean -- the	18	A. Generally, it would have been around any of the
19	property was basically at a street level when you	19	foundation wall lines.
20	began?	20	Q. Okay. The foundation, was it stacked out with --
21	A. Yes.	21	A. Yes.
22	Q. So you're saying eight to ten feet down from that	22	Q. -- string and so forth or something?
23	level?	23	A. Yes.
24	A. Yes.	24	Q. Okay. So you asked him to dig some other test
35		37	
1	Q. Okay. And at that point, he no longer saw any of	1	locations pretty much along that foundation?
2	this material that you named before?	2	A. Yes.
3	A. I had him stop there and dig test holes around	3	Q. Okay. And what did he -- he did this, right?
4	numerous locations around the foundation. There	4	A. Yes, he did.
5	was probably three or four spots, anyway.	5	Q. Okay. What did he find?
6	Q. Okay. Had you spoken with anyone back at your	6	A. He found after about three and a half to four feet
7	office --	7	of, I guess you could call it regular fill, he
8	A. Yes.	8	started encountering the same material as he did:
9	-- about this problem?	9	Burnt jars, pipes, wires, bricks, cash draws,
10	A. Yes.	10	radiators.
11	Q. Okay. Who did you speak with?	11	Q. Okay. So on these other locations -- did he find
12	A. I spoke with George LaPlume.	12	this on each of the other three to four spots?
13	Q. Okay. And what did you tell him?	13	A. Yes, he did.
14	A. I told him I was encountering construction debris	14	Q. Okay. And in each of those locations, was this
15	during the excavation.	15	debris material below the three to four feet level?
16	Q. Okay. And what did he tell you? What did he say	16	A. Yes.
17	in response?	17	Q. All right. At that point I take it this -- did
18	A. He told me in response if it was a little, to just	18	this activity take place within the next couple of
19	take care of it, throw it in the dumpster and keep	19	days of when you had started?
20	going.	20	A. Yes.
21	Q. Okay. And when you kept digging down -- strike	21	Q. All right. And at that point after you were able
22	that.	22	to see what you saw from those test pits, did you
23	At some point you say you told Mattuchio	23	talk with your office about the problem?
24	after he got down eight to ten feet, to stop	24	A. Yes, I did.

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<p style="text-align: right;">38</p> <p>1 Q. Okay. Who did you speak with at that point?</p> <p>2 A. I had spoken with George LaPlume and Bill Nason.</p> <p>3 Q. Okay. Who is Bill Nason?</p> <p>4 A. Bill Nason is another owner of PM Construction.</p> <p>5 Q. And what did Mr. LaPlume say this time, this second</p> <p>6 conversation?</p> <p>7 A. He told me to stop all digging, that my boss, Bill</p> <p>8 Nason, was on his way down from Saco.</p> <p>9 Q. Anything else that you recall in the conversation?</p> <p>10 A. I don't.</p> <p>11 Q. Okay. Did you speak with Bill Nason before he got</p> <p>12 on the road and was on his way down or from his</p> <p>13 cell phone?</p> <p>14 MR. KERESTER: Objection to form. You</p> <p>15 can answer. I'll be stating objections</p> <p>16 periodically, but you can still answer.</p> <p>17 THE WITNESS: Okay.</p> <p>18 A. I believe it was a conference call between George</p> <p>19 LaPlume, Bill Nason and myself.</p> <p>20 Q. Okay. So the three of you were in that call.</p> <p>21 At some point then, did Bill Nason get</p> <p>22 down there?</p> <p>23 A. Yes, he did.</p> <p>24 Q. Okay. Was it that same day, do you remember?</p>	<p style="text-align: right;">40</p> <p>1 Q. Okay. Who took the pictures? Did you take the</p> <p>2 pictures, or did Mr. Nason take pictures?</p> <p>3 A. I took some pictures, and he took some pictures.</p> <p>4 Q. All right. Same camera or you each had a camera?</p> <p>5 A. I don't know if he had -- I can't remember if his</p> <p>6 was a digital. I believe mine was just a</p> <p>7 disposable camera.</p> <p>8 Q. Okay. I'm going to show you some other</p> <p>9 photographs, and ask if you can -- these are</p> <p>10 photographs that we had marked in another</p> <p>11 deposition as exhibits 40A through 40K, and I'm</p> <p>12 going to ask you, are these the pictures that you</p> <p>13 took at that time, this first time?</p> <p>14 A. I couldn't tell you for sure if I took these</p> <p>15 pictures. I know either Bill Nason or myself did</p> <p>16 take these pictures. Whether it physically was me,</p> <p>17 I couldn't tell you.</p> <p>18 Because I remember seeing all this debris</p> <p>19 and everything else, but I don't remember seeing it</p> <p>20 as me taking the picture of it.</p> <p>21 Q. Okay. All right.</p> <p>22 A. But it either would have been Bill or myself that</p> <p>23 did do this.</p> <p>24 Q. Okay. Do these pictures look like how the site</p>
<p style="text-align: right;">39</p> <p>1 A. I believe it was. I believe it was late in that</p> <p>2 same day.</p> <p>3 Q. Okay. Do you remember anything -- I want to try to</p> <p>4 pin down when this stuff was.</p> <p>5 Do you remember -- we know it was in</p> <p>6 2004; is that right?</p> <p>7 A. Yeah, I believe so.</p> <p>8 Q. Okay. Do you remember anything about the season or</p> <p>9 the month that would help to locate when it was in</p> <p>10 that period of time?</p> <p>11 A. I believe when we -- I don't really -- I don't</p> <p>12 remember snow on the ground.</p> <p>13 Q. Okay. Do you remember if the temperature was hot</p> <p>14 like the summer?</p> <p>15 A. It was hotter towards the end of the project, so it</p> <p>16 may have been around springtime where we started.</p> <p>17 Q. Okay. So Bill Nason comes down; you show him</p> <p>18 around; you show him the test pits?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. What happens then?</p> <p>21 A. We had taken a bunch of pictures on site, and I</p> <p>22 believe -- I can't remember the exact conversation,</p> <p>23 but he was to get back to me on what to do. He was</p> <p>24 going to speak with the owner, I believe.</p>	<p style="text-align: right;">41</p> <p>1 looked right after you began to do work there and</p> <p>2 Bill Nason came down from Saco?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. Did PM Construction itself own any heavy</p> <p>5 equipment that it had at the site?</p> <p>6 A. No.</p> <p>7 Q. Okay. I'm going to ask you to take a peak at</p> <p>8 picture Exhibit 40I.</p> <p>9 A. (Witness complies.)</p> <p>10 Q. Do you recognize what that shows?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. Is it a fair and accurate photograph as the</p> <p>13 site looked at that moment?</p> <p>14 A. Yes.</p> <p>15 Q. Is that the Mattuchio heavy equipment?</p> <p>16 A. Yes.</p> <p>17 Q. The yellow --</p> <p>18 A. Excavator.</p> <p>19 Q. Excavator. Okay. And I take it that the -- what I</p> <p>20 see toward the middle of the picture is one of the</p> <p>21 preexisting foundation walls that were --</p> <p>22 A. That was one of the foundation walls --</p> <p>23 Q. -- there?</p> <p>24 A. Yes.</p>

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42	<p>1 Q. Okay. And 40K, again, shows the Mattuchio 2 excavator? 3 A. Yes. 4 Q. Okay. Do you know who that might be in the yellow 5 jacket leaning against the wall or crouched down 6 near the wall? 7 A. Yes, I do. 8 Q. Who is that? 9 A. That's Richard Pearl. 10 Q. You can recognize him from that picture? 11 A. Yes. 12 Q. Which is 40J? 13 A. Yes. 14 Q. Do you see in any of these pictures, Exhibit 40 15 with their respective letters, where there is shown 16 -- I think you mentioned radiators? 17 A. Yes. 18 Q. And was it one or more than one radiator? 19 A. It was at least one. I can't remember if it was 20 more. 21 Q. Okay. And I think you mentioned something also 22 about a toilet, did you say that? 23 A. No. 24 MR. KERESTER: Objection.</p>	44	<p>1 Q. Okay. Can you show me on 58 here where that 2 foundation piece is on the plan; in other words, 3 locate the two pieces? 4 A. I believe that's part of this wall. 5 Q. Okay. The big gray building that goes across 6 there, is that the back of the Family Dollar Store? 7 A. Yes. That's the side of it. 8 Q. The side of it. 9 Okay. And if you look on back to 58, 10 that would be this side of the Family Dollar Store 11 that's toward the middle of the property that runs 12 from Union Street down to -- 13 MR. KERESTER: I believe it's Ellis 14 Street. 15 Q. Ellis Street at the bottom? 16 A. Yes. 17 Q. Okay. And what am I seeing at the end, am I 18 looking toward Union Street or am I looking at 19 Ellis? 20 A. Across the street of Union Street. 21 Q. So in the distance here in the upper part where the 22 kind of tower is, that's looking in the direction 23 of Union Street? 24 A. Yes.</p>
43	<p>1 A. No. It was a cash draw. 2 Q. A cash draw, like from a cash register? 3 A. Yeah. 4 Q. Was it the whole register or just the draw that 5 pops out? 6 A. I believe it was the whole register. 7 Q. Okay. Can you find either of those objects in any 8 of these pictures and point them out to me? 9 MR. KERESTER: Off the record. 10 (Discussion held off the record.) 11 A. I don't see the radiator. 12 Q. Okay. Did you see the cash register in any of 13 those? 14 A. I don't believe so. It's kind of like finding 15 Waldo. 16 Q. What job did Richard Pearl have at the site? 17 A. Richard was helping me layout on site. 18 Q. What does that mean "layout"? 19 A. Laying out building corners, clean up basically. 20 Q. Okay. Showing you Exhibit 40J, the one that had 21 Richard Pearl bent over. What is this cement -- 22 appears to be a cement piece coming in from the 23 right side? 24 A. That's a foundation that was on the earth.</p>	45	<p>1 Q. Okay. And, I'm sorry, you thought that this 2 concrete piece was where now? 3 A. I believe it's in here somewhere. 4 Q. Okay. All right. So I'm going to ask, if you 5 would use -- here's a pen, and if you could just 6 draw roughly a circle or a shape as to where you 7 believe that's located on this? 8 A. I would say anywhere from -- 9 Q. We see the building here, right? 10 A. Mm-hmm. It's anywhere from here to here. 11 Q. Okay. Just draw a circle, and let's label that as 12 -- just put a number one next to it, please. 13 A. (Witness complies.) 14 Q. Great. Thank you. Now, I'd like to go back to 15 this 40I picture, and I think you identified that 16 there was a part of buried foundation wall shown in 17 that picture, too? 18 A. Mm-hmm. 19 Q. Yes? 20 A. Yes. 21 Q. Okay. Can you help me locate with your best 22 approximation as to where that is on -- where that 23 picture shows the foundation on this property? 24 A. That's right around here (indicating).</p>

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<p style="text-align: right;">46</p> <p>1 Q. Okay. Again, if you could draw kind of a loop, and 2 then if you could some place, you know, over here 3 perhaps, put a number two? 4 A. (Witness complies.) 5 Q. Okay. Great. Thank you. 6 Would you locate for me again in the same 7 way we've been doing where 40D is on the property 8 is best you can? 9 A. I would say probably right around in this area 10 (indicating). 11 Q. Okay. If you could mark that as number three? 12 A. (Witness complies.) 13 Q. Okay. So am I correct in this picture that the 14 gray part up top is part of the side of the Family 15 Dollar Store? 16 A. Yes. 17 Q. Okay. And where I see a piece of -- looks like 18 foundation on the left side of the picture, is that 19 the Family Dollar Store building foundation, or is 20 that part of some buried foundation? Take your 21 time. 22 A. I think that's part of an existing foundation found 23 on site. I don't believe the foundation for the 24 dollar store was that deep.</p>	<p style="text-align: right;">48</p> <p>1 Q. Okay. So they're all fair and accurate pictures 2 showing what you saw, you and Nason saw? 3 A. Yes. 4 Q. Okay. Thank you. 5 MR. ROBBINS: Can we just take a minute? 6 MR. KERESTER: Off the record for a 7 minute. 8 (Discussion held off the record.) 9 MR. ROBBINS: Counsel have looked through 10 photographs which have been marked collectively as 11 Exhibit 50 with letters and Exhibit 40 with various 12 letters, and have determined that the two piles are 13 identical photographs, except for photographs 50D, 14 50I and 50J, which are unique to Exhibit 50 and not 15 part of Exhibit 40. Everybody okay with this? 16 MR. KERESTER: Yes. 17 MS. ENGBERG: Yes. 18 MR. ROBBINS: Okay. Great. 19 BY MR. ROBBINS: 20 Q. Now, can you look at this photograph, 50J, and tell 21 me if you recognize what it shows? 22 A. Yes. 23 Q. Does that appear to be one of the photographs that 24 was taken by either you or Mr. Nason on this first</p>
<p style="text-align: right;">47</p> <p>1 Q. Okay. Where you thought it was located on 2 Exhibit 58, you don't have any drawing of a buried 3 foundation or a preexisting buried foundation? 4 A. Mm-hmm. 5 Q. Do you still think that's where it was though? 6 A. I'm pretty sure. It could be the Family Dollar 7 foundation, but it just seems kind of deep for it. 8 Q. Is what you see in this picture -- is this picture 9 a fair and accurate picture of what you saw when 10 Mattuchio dug these extra holes? 11 A. Oh, yeah, yes. 12 Q. Okay. So the material in the ground looked like 13 what is shown in this picture? 14 A. Yes. 15 Q. And this picture being 40D. 16 Okay. Is 40I a fair and accurate picture 17 of what you saw on the site also? 18 A. Yes. 19 Q. Just so I can be efficient here, are all of these 20 Exhibit 40 with their various letters, these were 21 pictures that were taken either by you or by 22 Mr. Nason when this problem first reared its head 23 and you became aware of it? 24 A. Yes.</p>	<p style="text-align: right;">49</p> <p>1 visit of the discovery of this problem? 2 A. Yes. 3 Q. Where is this? Can you point with your finger to 4 where this picture is depicting on this plan? 5 A. I believe it's right around number three area. 6 Q. Where you marked the number three area? 7 A. Yeah. 8 Q. Okay. And that's 50J. 9 Okay. And I'd like to show you 50I. Do 10 you recognize what that shows? 11 A. Yes. 12 Q. Again, is that one of the pictures that you believe 13 either you or Mr. Nason took on this day? 14 A. Yes. 15 Q. Okay. And can you tell me what that shows -- where 16 that it is on the property? 17 A. I don't know exactly where it is on the property. 18 It looks like one of the piles that was excavated 19 from one of the test holes. 20 Q. Okay. And these were the test holes that Mattuchio 21 dug along the parameter? 22 A. Around the foundation wall. 23 Q. Foundation wall. Thank you. 24 Lastly 50D, do you recognize what it</p>

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50		52	
1	shows?	1	Q. Now, there is a -- okay. Would you point out to me
2	A. Yes.	2	what kind or kinds of debris you see one at a time
3	Q. What does it show?	3	in this picture?
4	A. It shows debris.	4	A. I see wood.
5	Q. Okay. I should back up. Is that one of the	5	Q. Could you show me where you see the wood?
6	pictures that you believe either you or Mr. Nason	6	A. (Witness complies.)
7	took on this first visit?	7	Q. Okay. So talking about down at the lower portion
8	A. Yes.	8	of the dark area of the debris pile.
9	Q. Okay. From that picture, you can't locate where	9	A. And then in here, more wood.
10	that shows things?	10	Q. Another piece toward the dead middle. Okay.
11	A. Not really.	11	A. And it looks like a piece of wire.
12	Q. Is it a fair and accurate representation of the	12	Q. That's the long silvery snakey things?
13	condition of the soil that you found?	13	A. Yeah.
14	A. Yes.	14	Q. Okay.
15	Q. On that day?	15	A. Looks like a metal cabinet.
16	A. Yes.	16	Q. That's toward the middle left edge, that thing
17	Q. Now, I notice in some of these exhibits, and let me	17	appears a little blue gray?
18	go back to Exhibit 50D here, that I can see bricks	18	A. Yeah.
19	in this exhibit. Do you see bricks there?	19	Q. Anything else you see?
20	A. Yes.	20	A. Just total construction junk.
21	Q. Okay. Had you just found bricks, would this have	21	Q. Okay. Thank you.
22	represented a problem to you in excavating this	22	MR. KERESTER: Is that 50E?
23	project?	23	MR. ROBBINS: No, "A".
24	MR. KERESTER: Objection to form.	24	MR. KERESTER: All right. Thank you.
51		53	
1	A. Probably not. Depending on -- partially located	1	Q. In Exhibit 50C, I would like to ask you to take a
2	bricks, no.	2	look at that. I would like you to do the same
3	Q. Would it also not have been much of a problem	3	thing, can you point out to me items of debris that
4	because bricks are not like compactible, they are	4	you recognize, if any?
5	pretty solid?	5	A. Bricks, wood.
6	MR. KERESTER: Objection to form.	6	Q. Describe them to me? Bricks you're talking about
7	A. Depending on how close they are together.	7	towards -- where is the brick?
8	Q. Okay. You have to explain that a little more to	8	A. There's a brick right there.
9	me: Is it better if they're close or better if	9	Q. Okay. That little silvery thing --
10	they're far apart?	10	A. Yeah.
11	A. It's better if they're far.	11	Q. -- or yellow, white thing?
12	Q. Okay. And that there's something else in between	12	A. Yeah. Wood right in here.
13	them?	13	Q. That's toward the center of this area, that's wood?
14	A. Yes.	14	A. Yeah.
15	Q. And what would that be?	15	Q. Okay.
16	A. Dirt, gravel.	16	A. It looks like a piece of steel.
17	Q. Going to Exhibit 50A. Did you ever see -- is this	17	Q. And that's a brown-ish object that's sticking from
18	-- I may have asked you this already. Does this	18	the ground up toward the gray of the Family Dollar
19	appear to be a view that was photographed on this	19	Store?
20	first visit by either you or Nason?	20	A. Yeah.
21	A. Yes.	21	Q. Okay. Do you see any cement in that picture or
22	Q. Okay. And is it a fair and accurate representation	22	concrete?
23	of what you saw?	23	A. Besides the wall?
24	A. Oh, yes.	24	Q. Correct. Besides the wall. Thank you.

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<p>54</p> <p>1 A. And it looks like that might be a junk.</p> <p>2 Q. Okay. The sort of whitish thing down about two</p> <p>3 thirds of the way toward the left?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. Is this picture, 50E, a similar view, but</p> <p>6 from a different angle of that same pit?</p> <p>7 A. It looks it, yes.</p> <p>8 Q. Okay. What happened after you and Nason had the</p> <p>9 meeting, and Nason said he has to talk to the</p> <p>10 owner? What did you do next with regard to the</p> <p>11 project?</p> <p>12 A. Not much. Not much at all. Basically, we had the</p> <p>13 excavator stop, and we were waiting for James</p> <p>14 Hawkins to arrive on site.</p> <p>15 Q. Had you ever met him before this moment at that</p> <p>16 point?</p> <p>17 A. I don't believe so.</p> <p>18 Q. Had you guys ever done work for him before?</p> <p>19 MR. KERESTER: Objection to form.</p> <p>20 Q. Had PM Construction ever done work for him before?</p> <p>21 A. I believe we have.</p> <p>22 Q. Had you ever supervised or foremaned or worked in</p> <p>23 some way on a project for him before, you</p> <p>24 personally?</p>	<p>56</p> <p>1 building on.</p> <p>2 Q. Okay. That was your opinion based on your</p> <p>3 experience with PM Construction?</p> <p>4 A. Yes.</p> <p>5 MR. KERESTER: Objection to form.</p> <p>6 Q. What happened next after this -- after this meeting</p> <p>7 with him on site, what happened next?</p> <p>8 A. I believe he tried to call the prior owner.</p> <p>9 Q. Okay. And what was the next event that you</p> <p>10 participated in in terms of this is what I'm trying</p> <p>11 to get to?</p> <p>12 A. It wasn't very much.</p> <p>13 Q. Okay. Did you meet with him a second time at the</p> <p>14 site?</p> <p>15 A. I did. I believe I met with him and the prior</p> <p>16 owner of the lot.</p> <p>17 Q. Okay. Was that a Mr. Gateman?</p> <p>18 A. I believe so.</p> <p>19 Q. Okay. You didn't know Mr. Gateman beforehand?</p> <p>20 A. No.</p> <p>21 Q. You had never spoken with him before?</p> <p>22 A. No.</p> <p>23 Q. Okay. And at any point did Mr. Hawkins take any</p> <p>24 photographs that you observed him take?</p>
<p>55</p> <p>1 A. No, I don't believe so.</p> <p>2 Q. Okay. Did he eventually come to the site?</p> <p>3 A. Yes, he did.</p> <p>4 Q. Okay. Was that within a few days of these</p> <p>5 photographs having been taken?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. So within a few days of the taking of</p> <p>8 Exhibits 40 and 50, you had a meeting with Hawkins</p> <p>9 -- you were present?</p> <p>10 A. Yes, I was.</p> <p>11 Q. Okay. And who else was present?</p> <p>12 A. I think when he first arrived, I was the only one</p> <p>13 present.</p> <p>14 Q. Okay. And what did you do when he got there?</p> <p>15 A. We walked the site.</p> <p>16 Q. Okay. And did you point out things to him?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. What did he say?</p> <p>19 A. He asked me if we could -- if it could stay there.</p> <p>20 Q. Okay. And what did you tell him?</p> <p>21 A. I said I didn't think so.</p> <p>22 Q. Okay. And why was it that you didn't think it</p> <p>23 could stay there?</p> <p>24 A. It didn't look stable at all to be building a</p>	<p>57</p> <p>1 A. I think he did.</p> <p>2 Q. Do you have a memory of that, or are you guessing?</p> <p>3 A. I'm guessing.</p> <p>4 Q. Okay. Well, you don't have to guess. None of us</p> <p>5 want guesses.</p> <p>6 This meeting with you and Hawkins and</p> <p>7 Gateman, did this take place?</p> <p>8 A. Yeah. It was a very short meeting.</p> <p>9 Q. Roughly how long? How much time was spent when the</p> <p>10 three of you were together?</p> <p>11 A. Maybe a half an hour tops.</p> <p>12 Q. Okay. Anybody else present besides the three of</p> <p>13 you?</p> <p>14 A. I don't believe so.</p> <p>15 Q. Okay. What do you recall of the conversation by</p> <p>16 Mr. Hawkins?</p> <p>17 A. I recall him -- I believe he was asking the prior</p> <p>18 owner what he was going to do with all the debris</p> <p>19 in the ground.</p> <p>20 Q. Okay.</p> <p>21 A. Or about what he was going to do about it.</p> <p>22 Q. Okay. And any other conversation that you recall</p> <p>23 from him?</p> <p>24 A. I don't recall.</p>

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58	60
1 Q. Okay. Were you present when Mr. Gateman -- strike	1 came?
2 that.	2 A. I don't right offhand.
3 Did Mr. Gateman make any reply or	3 Q. Was it a man or a woman?
4 response to that inquiry?	4 A. It was a man.
5 A. If he did, I don't remember it word for word.	5 Q. Okay. Young? Old? Tall? White? Black?
6 Q. All right. Do you remember if he responded at all?	6 Mustache? Is there anything you can remember about
7 A. I remember a question coming up on why we couldn't	7 him?
8 build on it.	8 A. White male.
9 Q. Okay. The question coming up, was that a question	9 Q. White male.
10 from Mr. Hawkins or Mr. Gateman?	10 Okay. And how long was this between this
11 A. I believe it was asked right at first by James	11 meeting among the three of you and when the
12 Hawkins and through the prior owner.	12 building department person came to the site?
13 Q. That question was addressed to you to say, Well,	13 A. Maybe within that week.
14 why can't we build on top of this?	14 Q. All right. So within a few days of this time?
15 A. Yes.	15 A. Yes.
16 Q. Okay. And what did you respond?	16 Q. Okay. And were you present when the building
17 A. I told them that I could -- code wise, I could not	17 department guy came to the site?
18 build a building on that.	18 A. Yes.
19 Q. Okay. When you're referring to code, what are you	19 Q. Anybody else besides you present -- besides you and
20 talking about?	20 the building department guy?
21 A. I'm referring to before I could place any amount of	21 A. I don't believe so.
22 concrete for any footings, it would have needed to	22 Q. Okay. He met you at the site?
23 be inspected through the building department, and	23 A. Yes.
24 the building department would not let you place any	24 Q. And do you remember what time of day it was or
59	61
1 concrete on construction debris like that.	1 anything that pinpoints it?
2 Q. Okay. This last part of your response, "the	2 A. It would have been I believe after nine o'clock or
3 building department would not let you," that's your	3 even before three.
4 opinion about what the building --	4 Q. Okay. And what happened when this building
5 A. Yes.	5 department person came -- this is from the City of
6 Q. It's not based upon having talked with them?	6 Lynn, right?
7 A. No. It's based upon generally knowing the codes.	7 A. Yes.
8 Q. The building codes?	8 Q. Okay. What happened?
9 A. Yes.	9 A. I discussed if I needed any special permits, and
10 Q. Okay. Do you know if the building department, or	10 then if they needed any firm documentation on where
11 anyone from the building department, was ever	11 construction debris was going, and if all the junk
12 actually invited to the site to look at this?	12 material did have to come out, what he would like
13 A. Yes.	13 to see as far as all material being brought back
14 Q. Okay. When did that happen -- was it once or more	14 in; whether he would want a geotech report on the
15 than once that you remember?	15 material per pounds per square foot and associated
16 A. To investigate the materials, was once.	16 stuff like that.
17 Q. Okay. And did this occur after this meeting that	17 Q. Okay. And what did he -- do you know if he took
18 we've been talking about --	18 any pictures, by the way?
19 A. Yes.	19 A. I don't believe he did, not while I was there.
20 Q. -- between you and Gateman and Hawkins?	20 Q. Okay. And what was his responses when you -- I
21 A. Yes.	21 take it at some point you asked him, could you
22 Q. Okay. Who invited them to come to the property?	22 build on this?
23 A. I did.	23 A. Yes.
24 Q. You did. Do you know the name of the person who	24 Q. Okay. And what was his answer?

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<p style="text-align: right;">62</p> <p>1 A. No.</p> <p>2 Q. Okay. And what were his answers to the rest of the</p> <p>3 questions that you asked, Did you need a special</p> <p>4 permit and so forth?</p> <p>5 A. I don't believe we needed a special permit. He did</p> <p>6 want a general idea on where the material was</p> <p>7 going, making sure it wasn't going into somebody's</p> <p>8 backyard, and that I believe he would have wanted</p> <p>9 before a CO was issued for the building.</p> <p>10 Q. When you say a CO, you mean --</p> <p>11 A. A certificate of occupancy.</p> <p>12 Q. Occupancy. Okay.</p> <p>13 Any other responses to whether he needed</p> <p>14 kind of a geotech report about pounds per square</p> <p>15 foot?</p> <p>16 A. Yes.</p> <p>17 Q. He wanted that?</p> <p>18 A. Basically, what the building inspector wanted was</p> <p>19 he wanted documentation from a geotech engineer</p> <p>20 that the fill was brought up in compacted lifts.</p> <p>21 Q. Okay. Let me ask something about this, about</p> <p>22 compacted lifts. Compacting when you fill a piece</p> <p>23 of property, am I correct, is basically putting in</p> <p>24 your fill in certain amounts, packing it down so</p>	<p style="text-align: right;">64</p> <p>1 before you would even design a foundation. That's</p> <p>2 how the foundation is designed.</p> <p>3 Q. And the test boring means digging a pit of some</p> <p>4 kind?</p> <p>5 A. Sometimes they do it with digging a pit; sometimes</p> <p>6 it's drilled.</p> <p>7 Q. With like a pipe, kind of a coarse sample?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. Is that sample then tested for how compacted</p> <p>10 the soil is?</p> <p>11 A. I believe so.</p> <p>12 Q. Okay. Was getting that test thing done something</p> <p>13 that was done on this site other than after you</p> <p>14 found the debris -- was it ever done before?</p> <p>15 A. I believe so.</p> <p>16 Q. Okay. So people were reassured as to the compacted</p> <p>17 nature of the property before you started as far as</p> <p>18 you understood?</p> <p>19 MR. KERESTER: Objection to form.</p> <p>20 A. I believe so.</p> <p>21 Q. Okay. Do you remember anything else to help us</p> <p>22 identify who this person was from the building</p> <p>23 department? Can you give me any -- can you</p> <p>24 remember generally a sense of how old he was? Was</p>
<p style="text-align: right;">63</p> <p>1 that it's nice and tight, perhaps taking a</p> <p>2 measurement, and then putting the next layer down</p> <p>3 on top of it; is that essentially correct?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. And when data is needed, whoever needs the</p> <p>6 data, could say, We want the fill compacted in</p> <p>7 lifts of half a foot, one foot, two feet, whatever</p> <p>8 depth of soil each time they want put in; is that</p> <p>9 right?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. Did he specify which he wanted?</p> <p>12 A. The building inspector?</p> <p>13 Q. Yes.</p> <p>14 A. No.</p> <p>15 Q. When a building is -- strike that.</p> <p>16 How would you have known that the soil</p> <p>17 was sufficiently -- if it had none of the debris in</p> <p>18 it that you've talked about, how would you have</p> <p>19 known as the builder whether the soil was</p> <p>20 sufficiently compacted to support the building</p> <p>21 properly?</p> <p>22 A. Through test bores done prior to my being on site.</p> <p>23 Generally that is how they -- test bores on site</p> <p>24 would be one of the first things that you would do</p>	<p style="text-align: right;">65</p> <p>1 he as old as me?</p> <p>2 A. Forties or fifties.</p> <p>3 Q. Do you know what his position was with the building</p> <p>4 department?</p> <p>5 A. Code enforcement officer.</p> <p>6 Q. Code enforcement officer. Okay.</p> <p>7 A. I believe the City of Lynn has three of them.</p> <p>8 Q. How is it that you're aware of that? Have you done</p> <p>9 other work in Lynn?</p> <p>10 A. Sometimes if one of them is on vacation, the other</p> <p>11 one fills in when you need an inspection.</p> <p>12 Q. Okay. Did this code enforcement officer that came</p> <p>13 to the site, do you recall him making any notes or</p> <p>14 writing up any papers?</p> <p>15 A. I don't.</p> <p>16 Q. Okay. He didn't give you any papers?</p> <p>17 A. No.</p> <p>18 Q. Okay. Did anybody besides you meet with him?</p> <p>19 A. I don't believe so.</p> <p>20 Q. Okay. What happens next after this then? He comes</p> <p>21 to the site; he's confirmed that, in his opinion,</p> <p>22 you couldn't build on this; is that right?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. What then happens?</p>

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<p>66</p> <p>1 A. I was sent to another job for a period of, I want</p> <p>2 to say, at least four to six weeks.</p> <p>3 Q. Because no more construction was going to be</p> <p>4 starting on this until this problem had been</p> <p>5 resolved?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. Do you remember what that other job was, or</p> <p>8 where it was?</p> <p>9 A. I don't right offhand. It would have been another</p> <p>10 one of our projects somewhere out in the big blue</p> <p>11 marble. I don't know.</p> <p>12 Q. What was your understanding as to how this problem</p> <p>13 was going to be fixed or solved?</p> <p>14 A. I didn't have an understanding at first as far as</p> <p>15 how they were going to fix it.</p> <p>16 Q. Okay. Did you have -- after that, any</p> <p>17 conversations with anyone as to coming up with a</p> <p>18 plan on how to fix this?</p> <p>19 A. They asked me what I thought should be done on it.</p> <p>20 I believe it was James asked me what I thought</p> <p>21 needed to happen with it.</p> <p>22 Q. And what did you say?</p> <p>23 A. I said more than likely it would probably all have</p> <p>24 to come out.</p>	<p>68</p> <p>1 what the depths to which the excavation occurred,</p> <p>2 was deeper under the building footprints than it</p> <p>3 was where you had to put the parking lot?</p> <p>4 A. Yes. Ninety percent of debris was in this area.</p> <p>5 Q. And by that you're showing basically the area where</p> <p>6 the store ended up being?</p> <p>7 A. Yes.</p> <p>8 Q. And you're starting it roughly where the -- in sort</p> <p>9 of the center of the property running from Union to</p> <p>10 Ellis Street where you have drawn in the buried</p> <p>11 foundation wall?</p> <p>12 A. Mm-hmm.</p> <p>13 Q. From approximately the buried foundation wall up</p> <p>14 toward to the end of the property of Union Street?</p> <p>15 A. Yes. There was some on the other side.</p> <p>16 Q. Okay. Being toward Ellis?</p> <p>17 A. Being towards Ellis Street. Right in here there</p> <p>18 was a great big pocket of it.</p> <p>19 Q. Okay. And by "right here," you're talking about</p> <p>20 the area that adjoins numbers three and one that</p> <p>21 you drew?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. Go head.</p> <p>24 A. And it started to shallow out as it came on the</p>
<p>67</p> <p>1 Q. Did you have any conversation with anyone besides</p> <p>2 Mr. Hawkins?</p> <p>3 A. No, I don't believe so.</p> <p>4 Q. Did you have any conversations with either</p> <p>5 Mr. Nason or Mr. Moran, the owners?</p> <p>6 A. More than likely.</p> <p>7 Q. What was done? Are you aware of what was done to</p> <p>8 solve this problem?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. What was done?</p> <p>11 A. They excavated all of the material out.</p> <p>12 Q. Okay. Now, I'd like to ask you to look at</p> <p>13 Exhibit 58, okay, and can you with your finger show</p> <p>14 me the area that was excavated out?</p> <p>15 A. All of this area --</p> <p>16 Q. Please don't draw on it yet.</p> <p>17 A. All of, I would say, from this wall line right</p> <p>18 across.</p> <p>19 Q. Okay. Back up to Union Street?</p> <p>20 A. All of that, and then, I believe, enough down in</p> <p>21 here to get my subgrade cut for pavement.</p> <p>22 Q. For the parking lot?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. So I'm taking it that you're saying that</p>	<p>69</p> <p>1 backside of the property.</p> <p>2 Q. Okay. You indicated that the property contained</p> <p>3 brick?</p> <p>4 A. Yes.</p> <p>5 Q. Buried brick?</p> <p>6 A. Yes.</p> <p>7 Q. Are you able to give me your best estimate as to</p> <p>8 how much of what was taken out constituted brick?</p> <p>9 A. No, I couldn't give you an estimate on that.</p> <p>10 Q. You weren't actually on site to see every day,</p> <p>11 because you were on the other project?</p> <p>12 MR. KERESTER: Objection to form.</p> <p>13 A. No. I was on -- when I left this job site, nothing</p> <p>14 was done until I came back.</p> <p>15 Q. Well, maybe I got confused.</p> <p>16 A. Basically, they shut down the project for four to</p> <p>17 six weeks.</p> <p>18 Q. Okay. Was there excavating going on during the</p> <p>19 four to six weeks?</p> <p>20 A. No.</p> <p>21 Q. I misunderstood. Okay. So nothing was going on?</p> <p>22 A. Nothing was going.</p> <p>23 Q. Okay. And then you come back to the site?</p> <p>24 A. Yes.</p>

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<p>1 Q. And then Mr. Mattuchio comes back to the site?</p> <p>2 A. Yes.</p> <p>3 Q. And he starts doing this excavation?</p> <p>4 A. Yes.</p> <p>5 Q. How deep from the street level downward was the</p> <p>6 excavation in this area that you've indicated</p> <p>7 basically surrounding and including the footprint</p> <p>8 of the store?</p> <p>9 A. I believe we went in the range of 12 to 14 feet and</p> <p>10 encountered a slab.</p> <p>11 Q. A slab of concrete?</p> <p>12 A. Yeah. A big slab. It looked like from an existing</p> <p>13 building.</p> <p>14 Q. Okay. And did that slab have any relationship to</p> <p>15 these foundation walls that you've drawn?</p> <p>16 A. That slab ended pretty much where this wall is.</p> <p>17 Q. Okay. Why don't we just, so we know what we're</p> <p>18 talking about, could you just put a number four at</p> <p>19 the end here of where that wall is?</p> <p>20 A. (Witness complies.)</p> <p>21 Q. Okay. So that's the foundation wall you're</p> <p>22 referring to, is that one that's running side to</p> <p>23 side in the picture?</p> <p>24 A. Yes.</p>	<p>1 something huge?</p> <p>2 A. No.</p> <p>3 Q. Was that slab intact or had it been cracked?</p> <p>4 A. It was intact.</p> <p>5 Q. Now, was there some reason -- was digging done</p> <p>6 below the slab?</p> <p>7 A. No.</p> <p>8 Q. Why was it that the excavation went down 12 to</p> <p>9 14 feet?</p> <p>10 A. We encountered the slab, and then I had a geotech</p> <p>11 guy give us more info on what we should do with the</p> <p>12 slab. He told us we should fracture the slab and</p> <p>13 do testing, density testing, under the slab.</p> <p>14 Q. So fracture the slab, remove pieces, and do testing</p> <p>15 of the compaction underneath it?</p> <p>16 A. Yeah. Basically, not remove it, just fracture it,</p> <p>17 just crack it.</p> <p>18 Q. So you can get access though to the soil below it?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. Who is this geotech guy?</p> <p>21 A. I believe it was -- I want to say S.W. Cole. I</p> <p>22 can't nail it down, you know, and say exactly it</p> <p>23 was him, I believe it was. I believe he did the</p> <p>24 engineering of the soils at the beginning of the</p>
71	73
<p>1 Q. Now, you said that the slab -- I don't remember</p> <p>2 what you said.</p> <p>3 A. There was a slab after 12 to 14 feet of excavation.</p> <p>4 Q. Okay. And the slab ran -- approximate with your</p> <p>5 finger, what was the size of the slab, do you know?</p> <p>6 A. That slab went basically from this wall.</p> <p>7 Q. Okay. Across the number four?</p> <p>8 A. Right across.</p> <p>9 Q. All the way across?</p> <p>10 A. Till there was another foundation here for this</p> <p>11 existing building and another foundation here. It</p> <p>12 was that entire area.</p> <p>13 Q. Okay. Fine. So you're saying the entire width of</p> <p>14 the property that Mr. Hawkins had bought?</p> <p>15 A. Yes.</p> <p>16 Q. Running from what we've numbered as number four,</p> <p>17 which is this drawn in foundation wall, from there</p> <p>18 all the way toward Union Street up to the other</p> <p>19 foundation wall of Union Street?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. Do you know how thick that foundation was --</p> <p>22 that slab? I'm sorry, not foundation, slab.</p> <p>23 A. I believe it was three to four inches.</p> <p>24 Q. Okay. So it was not like two or three feet or</p>	<p>1 project.</p> <p>2 Q. When you say "at the beginning of the project," you</p> <p>3 mean those initial test borings that were done to</p> <p>4 determine if it was okay?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. Is there a reason you're not able to be more</p> <p>7 specific about the depth of this; 12 to 14 feet is</p> <p>8 a fair amount different?</p> <p>9 MR. KERESTER: Objection to form.</p> <p>10 A. I just -- I can't. It was either 12 -- it was in</p> <p>11 between 12 to 14. I want to say 14, but --</p> <p>12 Q. Okay. Let me show you Exhibit 52D and ask if you</p> <p>13 recognize the man shown in that?</p> <p>14 A. Yes.</p> <p>15 Q. Is that Mr. Pearl?</p> <p>16 A. Yes.</p> <p>17 Q. He appears to be holding and have extended a yellow</p> <p>18 tape measure?</p> <p>19 A. Yeah.</p> <p>20 Q. Okay. Does that help you feel more confident about</p> <p>21 the 14 feet?</p> <p>22 A. Pretty much, yeah.</p> <p>23 Q. Okay. Now, I'd like to show you some other photos</p> <p>24 that we have also marked as 52 with various letters</p>

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1	in the same series, and ask if you would look at	1	looks like, along in front of the foundation wall
2	them along with this one of Mr. Pearl, and tell me	2	there. Do you know what that line is?
3	if you recognize what they show?	3	A. I can't remember what that line represents, I
4	A. It looks like a pile of debris.	4	don't.
5	Q. Firstly, if you'd just look over all of them, and	5	Q. Is that a string?
6	make sure that you can -- first of all, are these	6	A. It could be. That might be the actual wall line
7	pictures that you've ever seen before?	7	that the foundation was suppose to be on.
8	A. I believe so, yes.	8	Q. Okay. And what would the line at that particular
9	Q. Okay. Do you know who took these pictures?	9	height represent?
10	A. No. It would either be Bill Nason or myself.	10	A. I don't know if it would represent anything height
11	Q. Okay. Were these pictures taken at the same time	11	wise. It's probably just location wise.
12	as the pictures that we looked at before at	12	Q. So to the best of your understanding, it was a line
13	Exhibit 40 or 50, and you can feel free to look at	13	to indicate where the front of the building went?
14	them if you need to refresh yourself?	14	A. Yes, I believe so.
15	MR. KERESTER: What exhibit number is he	15	Q. Okay. Do you know if the excavator that
16	looking at now?	16	Mr. Mattuchio operated was a Kumatso manufacturer?
17	MR. ROBBINS: These are Exhibits 52	17	A. No.
18	letters.	18	Q. I'll show you another picture here that was 16E.
19	A. I believe they could have been around the same time	19	A. Yes, I believe so.
20	or not far after.	20	Q. I'd like to show you another group of pictures
21	Q. Do you know if these pictures would have been taken	21	which have been variously marked 16A through E, and
22	after you returned from that six to eight weeks?	22	ask if you would look at them please, and then tell
23	MR. KERESTER: I think he said four to	23	me if you recognize what they show?
24	six.	24	A. They're pictures of the site.
75		77	
1	MR. ROBBINS: Four to six is correct.	1	Q. Do these pictures appear to have been taken at the
2	A. I believe it was before.	2	same time that these other groups of Exhibit 40 and
3	Q. You think this was before?	3	50 were taken or at a different date?
4	A. Yeah.	4	A. At a different date.
5	Q. Okay. Is there something about some of the	5	Q. Do these pictures show how the site looked after
6	pictures that helps you to think that it was	6	the excavation was done, was completed?
7	before?	7	MR. KERESTER: Objection to form.
8	A. I still see Richard in the same jacket in that, you	8	A. It was fairly close to completed. I don't believe
9	know. It tells me it's pretty close to the day he	9	it was done yet.
10	was by the wall there.	10	Q. Do you see any debris in these pictures, if so,
11	Q. Okay. Can I just take another look at these?	11	would you point it out to me?
12	A. (Witness complies.)	12	A. It looks like concrete.
13	Q. Thank you. In 52A and E, am I correct that they	13	Q. And you're talking about Exhibit 16B, as in boy,
14	both show an excavator?	14	and you see a pile of concrete to the left?
15	A. Yes.	15	A. Yes.
16	Q. In Exhibit 52B, do you recognize what it shows?	16	Q. Okay.
17	A. Yes. That, I believe, is the front wall line on	17	A. And it looks like wood and bricks again. It's
18	Union Street.	18	quite far though so --
19	Q. Okay. Do you see any debris in that picture?	19	Q. Okay. Do any of these pictures show this
20	A. Very, very little.	20	foundation slab that you indicated the excavation
21	Q. Okay.	21	went down to?
22	A. Some, but not much.	22	A. These two.
23	Q. Okay. There is a silverish -- I'll point it out to	23	Q. Okay. All right. So the the two that you're
24	you, a silverish, whitish, grayish line running, it	24	indicating are 16C and D. Can you point out to me

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<p>1 where that slab is? By the way, is that the</p> <p>2 correct term for this three to four-inch thick</p> <p>3 concrete?</p> <p>4 A. Yes.</p> <p>5 Q. That's called slab, right?</p> <p>6 A. Yes.</p> <p>7 Q. Okay.</p> <p>8 A. Looks to be right here and here.</p> <p>9 Q. Okay. It almost looks like a circular piece. More</p> <p>10 specifically, in 16D, you're talking about from the</p> <p>11 picture, it looks like kind of an oval shape toward</p> <p>12 the top of the picture; is that right?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. And on 16C, you're referring to what looks</p> <p>15 like the same oval site, except it's midway and on</p> <p>16 the right side of the picture?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. And right here we're looking, in both of</p> <p>19 these pictures, we're looking toward Union Street?</p> <p>20 A. No. This one it appears he's on Union Street</p> <p>21 taking the picture.</p> <p>22 Q. Looking toward Ellis?</p> <p>23 A. Yes. This one also -- this one he appears he's</p> <p>24 right at the corner of the dollar store on Union</p>	<p>1 A. I believe so, yes.</p> <p>2 Q. Okay. How long did it take Mr. Mattuchio after you</p> <p>3 were -- strike that.</p> <p>4 You returned back to the job on a certain</p> <p>5 day, did Mr. Mattuchio come back to the site that</p> <p>6 same day?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. And did he start his work to do the</p> <p>9 excavation?</p> <p>10 A. Yes.</p> <p>11 Q. Now, I'm a little bit confused here. If 16C and D</p> <p>12 are looking toward Ellis Street, if we look at 58,</p> <p>13 we've kind of agreed for the cut off word at the</p> <p>14 bottom of this page is actually Ellis Street.</p> <p>15 These two pictures would appear to be</p> <p>16 showing an area that is near Ellis Street and not</p> <p>17 an area near Union Street, am I correct in that? I</p> <p>18 just want to make sure that we all are oriented</p> <p>19 properly on this.</p> <p>20 A. No. These pictures right here are generally right</p> <p>21 in here.</p> <p>22 Q. So you're saying 16C and D are showing the</p> <p>23 excavation down to the slab, and where the slab is</p> <p>24 shown in these sort of ovals, is the part of the</p>
79	81
<p>1 Street?</p> <p>2 Q. Okay. So you're saying that where the yellow</p> <p>3 excavator machinery is located is near to Ellis</p> <p>4 Street?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. And on this 16D -- that was 16C. On 16D,</p> <p>7 again, I see a ramp, what appears to be like a ramp</p> <p>8 going up to ground level. Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. And that ramp fed from Ellis Street; is that</p> <p>11 what you're saying?</p> <p>12 A. Yes.</p> <p>13 Q. And, again, you can see the ramp in the other one</p> <p>14 too, in 16C, kind of middle of the picture up</p> <p>15 toward on the right side there; is that right?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. And the pile of concrete, what appears to be</p> <p>18 concrete in that picture, is shown near that ramp;</p> <p>19 is that right?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. And does that concrete, was that the</p> <p>22 foundation -- some of the foundation pieces that</p> <p>23 you had drawn with the hash marks on 58, but broken</p> <p>24 up and removed?</p>	<p>1 site that is near Union Street and is underneath or</p> <p>2 would eventually become underneath the Aaron Store?</p> <p>3 A. Yes.</p> <p>4 MR. KERESTER: Go off the record for a</p> <p>5 moment.</p> <p>6 MR. ROBBINS: Sure.</p> <p>7 (Discussion held off the record.)</p> <p>8 MR. ROBBINS: We just had a little off</p> <p>9 the record conversation.</p> <p>10 Q. Exhibit 16B, okay, do you see in there a building</p> <p>11 with a sign saying "Jimenez Plaza"?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. And is that building located on Union</p> <p>14 Street?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. And Aaron's was finally built, the front of</p> <p>17 Aaron's faced across the street more or less to the</p> <p>18 Jimenez Plaza Store?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. Thank you.</p> <p>21 Now, there was a chain link fence that PM</p> <p>22 Construction had erected around the property; is</p> <p>23 that correct?</p> <p>24 A. Yes.</p>

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82	<p>1 Q. Okay. Would you with your finger show me where the</p> <p>2 fence was located?</p> <p>3 A. Pretty much from the backside of the dollar store.</p> <p>4 Q. Okay. Going down toward Ellis Street, along Ellis</p> <p>5 Street.</p> <p>6 A. Down Ellis. Across Ellis Street with like a</p> <p>7 24-foot opening, and then back down to the other</p> <p>8 chain link fence.</p> <p>9 Q. For the store on the left?</p> <p>10 A. Yes. And one piece across the front, about one</p> <p>11 foot onto the sidewalk on Union Street.</p> <p>12 Q. Okay. On the left side of this Exhibit 58 plan</p> <p>13 where it says N55-30-38W, there was another</p> <p>14 building over there?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. So in 16B, the one that had the Jimenez</p> <p>17 building in it, the person -- you can see what</p> <p>18 looks like a chain link fence right immediately</p> <p>19 into the picture --</p> <p>20 A. Yes.</p> <p>21 Q. -- like you're looking through it, is that the</p> <p>22 chain link fence that would have been along</p> <p>23 parallel with and along Ellis Street?</p> <p>24 A. Yes.</p>	84	<p>1 A. This one appears to be this.</p> <p>2 Q. Okay. Is that the one that we marked before number</p> <p>3 four?</p> <p>4 A. Yes.</p> <p>5 Q. And from this view in this picture, can you</p> <p>6 determine if any excavation is shown from the</p> <p>7 number four wall back toward Ellis Street which is</p> <p>8 the direction we're looking?</p> <p>9 A. No, not from the picture.</p> <p>10 Q. Okay. How about from 16D, can you tell from there?</p> <p>11 A. No.</p> <p>12 Q. Okay. So what these 16C and D show really is the</p> <p>13 slab portion that we identified before it really</p> <p>14 appears to be adjoining wall number four; is that a</p> <p>15 fair description?</p> <p>16 MR. KERESTER: Objection to form.</p> <p>17 A. I believe so.</p> <p>18 Q. Okay. In 16A, on the other hand looking toward</p> <p>19 Union Street, shows excavation toward Union Street;</p> <p>20 is that right?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. And that would also be true for 16B, would</p> <p>23 it not?</p> <p>24 A. Yes.</p>
83	<p>1 Q. And on 16C and D, there is also a chain link fence,</p> <p>2 yes?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. Which chain link fence was those two</p> <p>5 pictures shot through?</p> <p>6 A. I believe, I didn't take the pictures, but I</p> <p>7 believe it was shot from Union Street looking</p> <p>8 towards Ellis Street.</p> <p>9 Q. Okay. Can I just see them for a second?</p> <p>10 A. (Witness complies.)</p> <p>11 Q. Looking toward Ellis Street. Okay. How far from</p> <p>12 Ellis Street was the ramp -- strike that.</p> <p>13 In 16C, in the middle here, do you see</p> <p>14 what looks like a piece of foundation?</p> <p>15 A. Yes, I do.</p> <p>16 Q. Okay. Do you know which piece of foundation that</p> <p>17 is on plan 58 or Exhibit 58?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. Would you point to it with your finger?</p> <p>20 A. That's this section (indicating).</p> <p>21 Q. Okay. So what is being shown in this, I guess</p> <p>22 you'd say just above the middle and kind of</p> <p>23 centered, is the foundation in which of these walls</p> <p>24 on the plan is it?</p>	85	<p>1 Q. Okay. Thank you for your patience.</p> <p>2 Did you ever meet with someone named --</p> <p>3 with any representative from a company called</p> <p>4 Roberts Demo on this project?</p> <p>5 A. Yes, I did.</p> <p>6 Q. Okay. Was Mr. Pearl with you at the time, or were</p> <p>7 you by yourself?</p> <p>8 A. I believe he was with me, but I don't believe he</p> <p>9 was involved in the conversation.</p> <p>10 Q. Okay. And in terms of these other steps that we've</p> <p>11 talked about, I take it happened after the four to</p> <p>12 six week break when the site was shut down?</p> <p>13 MR. KERESTER: Objection.</p> <p>14 Q. Or did that conversation occur before?</p> <p>15 A. I believe it was before.</p> <p>16 Q. Okay. So before that shutdown?</p> <p>17 A. Yeah. Well, I think we had shut it down, but I</p> <p>18 believe it was within a couple of weeks after we</p> <p>19 shut it down there was nobody working on site, but</p> <p>20 I did have a meeting on site with Robert</p> <p>21 Dismantling.</p> <p>22 Q. Okay. And do you know why you had a meeting with</p> <p>23 Roberts Dismantling?</p> <p>24 A. I believe it was James Hawkins wanted us to have a</p>

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<p style="text-align: right;">86</p> <p>1 meeting with Roberts Dismantling who the prior 2 owner had referred all the junk on site as Roberts 3 Dismantling's problem. 4 Q. Okay. And do you know who from Robert Dismantling 5 that you spoke with? 6 A. I don't recall his name. 7 Q. Do you remember what the man looked like at all? 8 A. Not really. 9 Q. Okay. Was it a very heavy man? 10 A. I don't believe he was a very heavy set man, no. 11 Q. So you had a conversation with him about this 12 problem? 13 A. Yes. 14 Q. What did you ask him and what did he say, or what 15 did you say and what did he say? 16 A. I asked him, and I can't remember word for word, 17 but it was along the lines of, Are you going to 18 take care of all of the debris in the hole? 19 Q. Okay. And what did he respond? 20 A. He said absolutely not. 21 Q. Did he say anything else? 22 A. He pretty much said that he was told exactly -- 23 that he did exactly what he was told to do, and 24 anything in that hole is the prior owner's problem.</p>	<p style="text-align: right;">88</p> <p>1 A. Those are sent into the company. 2 Q. Okay. Other than those daily reports that you send 3 into the company, do you have any personal notes or 4 logbooks or records that you keep yourself at your 5 personal residence? 6 A. No. 7 Q. Are you aware of -- strike that. 8 I'd like to show you another document 9 which was Exhibit 29, and ask if you'd look at it. 10 It consists of three sheets of paper. If you'd 11 look at it and tell me if you've ever seen it 12 before, or if you recognize what it is? 13 A. What was the question you asked about? 14 Q. Have you ever seen these pieces of paper before 15 right now? 16 A. I haven't seen them typed up like this, but I do 17 recall. 18 Q. Have you seen them in some other form? 19 A. They may have been handwritten, I believe. 20 Q. Did you write these notes up? 21 A. I believe I wrote one of them, yes. 22 Q. Which one did you write? 23 A. Some of these notes may be taken from my job 24 reports. I believe that's where they may have been</p>
<p style="text-align: right;">87</p> <p>1 Q. Okay. Did he say anything else? 2 A. I can't recall. He may have. 3 Q. Did he talk about anyone else that was going to be 4 doing any work on the site or fixing this problem? 5 A. Did he? 6 Q. Yes. 7 A. I don't believe so. 8 Q. Okay. Did you ever meet with anyone else other 9 than the conversations we've talked about now, 10 Hawkins, Gateman, the code enforcement officer, 11 Roberts Demo, am I leaving out anybody? 12 Did you have any other conversations at 13 the site with anyone else involved in trying to 14 solve or explain this problem? 15 MR. KERESTER: Objection to form. 16 A. I don't recall. 17 Q. So you don't recall anybody else that I've 18 forgotten to ask you about is what I'm saying? 19 A. No. 20 Q. Do you keep personal notes or a log of your work? 21 A. Daily job reports. 22 Q. Daily job reports. Okay. And do you keep those 23 personally, or do you send them into the company or 24 both?</p>	<p style="text-align: right;">89</p> <p>1 taken from. 2 Q. Okay. So am I correct in what you're saying is you 3 recognize some of the statements and information as 4 having originated with you, but you think it was 5 found in your job reports? 6 A. I believe so. 7 Q. Okay. These are some sort of summaries or 8 collections of what those -- 9 A. Yes. In a note attached to my job report. 10 Q. Okay. If I could just see that for a minute? 11 A. (Witness complies.) 12 Q. Thanks. One of the pages has at the top page -- 13 well, the second sheet in it says, "Notes of 14 Richard Pearl," is that correct? 15 A. Yes. 16 Q. Okay. And then the third, the last of the three 17 sheets, just says "Steven McIntyre-Aaron's 18 Furniture"? 19 A. Yep. 20 Q. Okay. Are you saying that the notes on this page, 21 this third page, are the ones that may have been 22 drawn from your daily records, or are you saying 23 that the material on both pages was? 24 A. No. I believe this one right here I did not write.</p>

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1	Q. Okay. So on page two down through ten feet trash,	1	typewritten notes that are contained in Exhibit No.
2	the words "but yes" beginning at 4/9/04, you think	2	29.
3	was you?	3	Do you recall that Mr. Robbins was asking
4	A. I believe so.	4	you some questions about those notes?
5	Q. I don't know what you're trying to tell me, you	5	A. Yes.
6	know, when you're saying "down to this point".	6	Q. Do those notes assist you in refreshing your
7	A. I believe down to where it says 4/9/04 is mine.	7	recollection as to what conversations you had at
8	Q. And then down toward the bottom?	8	the property on various dates?
9	A. Yes.	9	A. Yes.
10	Q. That's yours?	10	Q. And directing your attention in particular to the
11	A. I believe so.	11	note appearing on the third page of Exhibit No. 29,
12	Q. Okay. So the material in 4/9/04, 4/14/04; is that	12	there's a notation appearing under your name for
13	right, then onto the last page there's another	13	the date April 9th, 2004; is that correct?
14	4/9/04 and 4/14/04, so you think that in both	14	A. Yes.
15	instances of those two dates, those materials came	15	Q. And can you tell me generally what that note
16	from you?	16	reflects?
17	A. Yes.	17	A. Meaning what it reflects --
18	Q. All right. And do you know when this stuff was	18	Q. Do your notes appear to reflect your notes of a
19	written up?	19	conversation or a meeting that took place on or
20	A. I don't know the exact day. I don't.	20	about April 9th, 2004?
21	Q. And in this third page where under the note of	21	A. Yeah.
22	4/9/04, there's a statement, "Bill Gateman told me	22	Q. And did you make some handwritten notations
23	he would have Roberts Dismantling contact me for	23	reflecting the information contained in Exhibit 29?
24	another site meeting, about removing the debris."	24	A. Yes. I believe that did come off of one of my job
91		93	
1	Did I read that right?	1	reports.
2	A. Yes.	2	Q. Okay. And to the best of your understanding, is
3	Q. Okay. And was it after that that you had the	3	the typewritten notation appearing on the
4	meeting with the individual from Robert	4	April 9th, 2004, a fair and accurate representation
5	Dismantling?	5	of the handwritten notations that you made?
6	A. Yes.	6	A. Yes.
7	Q. And is the best of your recollection that that	7	Q. And have you had a chance to read through the
8	meeting would have occurred on or about April 14th	8	notation for April 9th, 2004?
9	from these notes? Does that help you remember?	9	A. Yes.
10	A. Yeah. I told you I couldn't give you a nail down	10	Q. Is April 9th the date on which you first had a
11	date.	11	meeting with Mr. Hawkins at the site regarding the
12	Q. Okay. That's fine. I have no other questions	12	subject of the demolition debris?
13	right now.	13	A. Yes, I believe so.
14	MR. KERESTER: I'm going to have some	14	Q. Okay. Now that you've had an opportunity to
15	questions. It will probably take, like, a half an	15	refresh your recollection by reading these notes,
16	hour. Did you want to take a short lunch break, or	16	what do you recall was said during that meeting?
17	would you like to keep going?	17	A. We were going over different ways on how we could
18	THE WITNESS: I'm all set.	18	leave the material in the hole, and basically build
19	(A short break was taken.)	19	around it, whether it would be on pile caps or --
20	EXAMINATION	20	Q. To the best of your recollection, did Mr. Hawkins
21	BY MR. KERESTER:	21	ask you if --
22	Q. Mr. McIntyre, my name is Dale Kerester. I	22	MR. ROBBINS: I'm sorry, could he finish
23	represent the plaintiff, Georto, in this matter.	23	his answer? I don't think he was finished with his
24	I'd like to direct your attention again to the	24	answer.

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<p style="text-align: right;">94</p> <p>1 Q. Did you finish?</p> <p>2 A. Yeah, I was -- you know, pile caps or any other way</p> <p>3 possible to build on top of this.</p> <p>4 Q. Was that something that Mr. Hawkins said to you?</p> <p>5 A. That was his first question, yes, if we could keep</p> <p>6 it.</p> <p>7 Q. And what was your response?</p> <p>8 A. It would have to go back to a structural engineer.</p> <p>9 Q. And what, if anything, did you say about the</p> <p>10 subject of the building code at that time?</p> <p>11 A. That you could not build on that material.</p> <p>12 Q. Okay. Did you make some determination at that</p> <p>13 point in time that PM Construction would be unable</p> <p>14 to build the building on the material that you</p> <p>15 discovered?</p> <p>16 A. Yes.</p> <p>17 Q. And what was the basis for that, or why did you</p> <p>18 make that determination -- let me rephrase the</p> <p>19 question, what determination did you make?</p> <p>20 A. I determined seeing the debris in the hole that</p> <p>21 there was no way you would get the amount of pounds</p> <p>22 per square foot out of that debris to hold up that</p> <p>23 building; therefore, the building inspector</p> <p>24 wouldn't let you even build it that way.</p>	<p style="text-align: right;">96</p> <p>1 time that any work took place, can you describe</p> <p>2 what it looked like?</p> <p>3 A. It looked like a fairly cleaned lot, level, flat, a</p> <p>4 few bricks, maybe some concrete chunks, but</p> <p>5 generally in good condition.</p> <p>6 Q. Okay. And at that point in time, what, if any,</p> <p>7 concerns did you have about your ability to build a</p> <p>8 building on that site?</p> <p>9 A. The only concern I had about building that building</p> <p>10 was being so close to the road and being so tight</p> <p>11 to other buildings.</p> <p>12 Q. Did you make any observations as to whether there</p> <p>13 had been any recent disturbance of the soil when</p> <p>14 you first visited the site?</p> <p>15 A. There didn't appear to be.</p> <p>16 Q. Prior to April 9th, approximately how many days of</p> <p>17 excavation work had Mattuchio done at the site?</p> <p>18 A. It's hard to tell. Not many. Less than a work</p> <p>19 week. I would say probably two or three days tops.</p> <p>20 Q. And what did you observe of the site during those</p> <p>21 first few days that Mattuchio did some work? What</p> <p>22 work were they doing, and what observations did you</p> <p>23 make?</p> <p>24 A. First day they pretty much did fencing around the</p>
<p style="text-align: right;">95</p> <p>1 Q. Did you make that determination on the basis of</p> <p>2 your experience in the construction industry?</p> <p>3 A. Yes.</p> <p>4 Q. And how long have you been working in the</p> <p>5 construction industry?</p> <p>6 A. I have been doing construction for 16 to 18 years.</p> <p>7 Q. And had you ever been involved in any project in</p> <p>8 which you built a building on top of the kind of</p> <p>9 debris that you found at the Lynn site?</p> <p>10 A. We have never built a building on top of debris</p> <p>11 like that.</p> <p>12 Q. Approximately how long after you first started any</p> <p>13 site work on the Lynn property did the meeting on</p> <p>14 April 9th take place?</p> <p>15 A. I would say within a week to -- you're talking the</p> <p>16 meeting with James Hawkins?</p> <p>17 Q. Correct.</p> <p>18 A. I would say within a week of starting the project.</p> <p>19 Two weeks the absolute most.</p> <p>20 Q. Is it fair to state that to the best of your</p> <p>21 recollection, PM started site work on the Lynn</p> <p>22 property in or about early April 2004?</p> <p>23 A. Yes.</p> <p>24 Q. And when you first visited the site prior to the</p>	<p style="text-align: right;">97</p> <p>1 project. Probably, like, the second day, I believe</p> <p>2 he was starting to take subgrade fill out of the</p> <p>3 site in the building location.</p> <p>4 Q. So approximately what depth during that second day?</p> <p>5 A. I believe he was excavating around 12 inches. I</p> <p>6 believe the plans called for 12 inches of gravel</p> <p>7 underneath the slab.</p> <p>8 Q. And what did you observe was being excavated in</p> <p>9 that twelve-inch space?</p> <p>10 A. It was kind of clay bricks in it and some concrete</p> <p>11 junks, a little gravel.</p> <p>12 Q. And what, if any, concerns did you have at that</p> <p>13 time about your ability to build on the site?</p> <p>14 A. I didn't have any concerns at that time.</p> <p>15 Q. And what did Mattuchio do next?</p> <p>16 A. He started excavating for the actual foundation.</p> <p>17 Q. By "foundation," are you referring to the exterior</p> <p>18 parameter of the intended building?</p> <p>19 A. Yes.</p> <p>20 Q. Did he also start work on any footings for the</p> <p>21 foundation?</p> <p>22 A. That's what he would have been excavating for.</p> <p>23 Q. Okay. Can you describe what you mean by that then</p> <p>24 -- what in particular was he excavating for at that</p>

25 (Pages 94 to 97)

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98		100
1	time?	1 A. Yes.
2	A. He would have been digging the ground to get to the	2 Q. Was that individual operating the equipment at the
3	right depths or frost line for the spread footings	3 direction of Mr. Rossi, to your understanding?
4	to actually hold the foundation walls which would	4 A. Yes.
5	actually hold the building.	5 Q. Can you describe what the excavation work that you
6	Q. And what is the frost line -- how deep is that?	6 observed by Mattuchio in connection with this
7	A. Generally, it's minimal four feet.	7 spread footing? What did you see?
8	Q. And prior to his commencement of the work for the	8 A. We were excavating down approximately four and a
9	spread footings, had he excavated below	9 half to five feet down from grade, which would be
10	approximately four feet, to your knowledge?	10 around straight level. Not too bad in some areas,
11	A. No.	11 and he got a little bit of the foundation excavated
12	Q. And prior to the time that he commenced the work on	12 and started running into construction debris.
13	these spread footings, what, if any, concerns did	13 Q. Can you describe generally what you first saw of
14	you have about your ability to build a building on	14 any construction debris as Mattuchio was doing the
15	the site?	15 work?
16	A. You're saying when he stopped the work?	16 A. Started seeing more amounts of brick coming out and
17	Q. No. Before he actually commenced doing any digging	17 ashes, splintered wood, pipes, wire.
18	for these spread footings below four feet.	18 Q. What was your reaction at the time?
19	A. I didn't have any concerns.	19 A. My reaction at first was -- we had run into stuff
20	Q. And were you on the site each and every day that he	20 like that before. Dig it out and keep going.
21	was doing work?	21 Q. And did you then place a phone call back to
22	A. Yes.	22 somebody at PM after you made this initial
23	Q. Who from Thomas Mattuchio was performing any	23 discovery?
24	services at the site during this early April time	24 A. No.
99		101
1	period?	1 Q. And what did you do next?
2	A. He had a superintendent on site. I believe his	2 A. I had him continue to excavate where the
3	name was Giovanni Rossi. They called him JR.	3 construction debris was hoping to find the bottom
4	Q. Anybody else?	4 of it.
5	A. He had one operator of his excavator, and I don't	5 Q. What did he then do?
6	recall his name.	6 A. Who's "he"?
7	Q. Is it fair to say there were two individuals from	7 Q. The individual from Mattuchio.
8	Mattuchio on site?	8 A. He continued to dig.
9	A. Yes.	9 Q. Directing your attention to Exhibit No. 58,
10	Q. Was Mr. Mattuchio, himself, on site?	10 approximately where did he then continue to dig?
11	A. Mr. Mattuchio came on site one day for maybe 10,	11 A. He was on one of these wall lines right here. I
12	15 minutes.	12 think he started in that corner. I believe he was
13	Q. Do you know when that was?	13 right around the middle of the Family Dollar and
14	A. I don't remember the exact day.	14 here somewhere.
15	Q. Would that have been prior to the discovery of any	15 Q. And what did you observe there?
16	debris on the site?	16 A. When he kept excavating?
17	A. Yes.	17 Q. Yes.
18	Q. What was Mr. Rossi's role? What did he do?	18 A. More debris.
19	A. He, I believe, was the superintendent from	19 Q. Can you describe that debris?
20	Mattuchio Corporation.	20 A. That debris was getting worse. There was more wood
21	Q. Was he operating any equipment?	21 in it. A lot of ashes, charred remains, pieces of
22	A. No.	22 cast iron pipe, radiators.
23	Q. And there was another individual who actually	23 Q. Why do you use the word "worse" to describe what
24	operated the excavator; is that right?	24 was discovered there?

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<p style="text-align: right;">102</p> <p>1 A. Because on the top it was kind of mixed with dirt, 2 so it wasn't too, too bad. Once we started getting 3 down, I want to say, below five feet from grade, it 4 looked like just continuous debris, no dirt mixed 5 in it at all. 6 Q. And then what did you do next? 7 A. Then I called my office. 8 Q. And at some point in time, did you ask anyone from 9 Mattuchio to dig any other test pits or excavation 10 pits on the site? 11 A. Yes, I did. 12 Q. Okay. And where did you ask him to do that? 13 A. I had him do it generally on wall line, and I 14 believe I had him do two test pits on the interior 15 of the building -- 16 Q. Did you observe him do that work? I'm sorry. You 17 didn't finish your answer. 18 A. I had them do, I believe, two test pits on the 19 interior of the proposed building. 20 Q. Okay. And if you can use the pen and identify by 21 the number five where those test pits were located, 22 the ones that you referred to as being in the 23 interior of the building? 24 A. I know one of them was up in the front corner here.</p>	<p style="text-align: right;">104</p> <p>1 building as well as around the exterior of where 2 the building would be located? 3 A. Yes. 4 Q. Okay. And what did you observe with respect to 5 that additional excavation? 6 A. I observed a lot of debris coming out of the hole. 7 Q. What kind of debris? 8 A. Construction debris: Wood, a lot of ashes, brick, 9 pipes. 10 Q. Directing your attention to the brick, can you 11 describe what the appearance was of the bricks 12 generally; in other words, were they bricks that we 13 would ordinary think of them, or did they appear to 14 have been crushed or processed? 15 A. No. A lot of them were intact. They don't look 16 like they had been processed. To me, a processed 17 brick would be just a chip of a brick. 18 Q. Do you have any understanding of whether brick or 19 concrete is ever processed in any way in connection 20 with construction projects? 21 A. Yes. 22 Q. What's your understanding? 23 A. My understanding when it's processed for gravel, 24 it's usually ground.</p>
<p style="text-align: right;">103</p> <p>1 Q. So you've drawn a circle to indicate? 2 A. Yeah. And I believe I did another one around where 3 the interior pads and all the columns are for it. 4 So almost directly in the middle. 5 Q. Okay. And what was your purpose in asking him to 6 perform the excavation -- let me back up for just a 7 moment. 8 Can you indicate by another circle where 9 the location was of the second test pit? 10 A. On the interior? 11 Q. Yes. 12 A. I believe it was right around in the middle. 13 Q. Can you identify those by 5A and 5B, 5A can 14 indicate the first one that you identified? 15 A. (Witness complies.) 16 Q. Why did you ask him to dig in those areas? 17 A. To get a firm grasp on exactly what was in the 18 ground, whether we could just excavate -- if we had 19 to take it out, if we could just excavate the 20 foundation, or if it would all have to come out. 21 Q. Did he, in fact, excavate all those areas that you 22 identified? 23 A. Yes, he did. 24 Q. Did he excavate both in the interior of the</p>	<p style="text-align: right;">105</p> <p>1 Q. Did it appear as if there was any grinding of the 2 brick or concrete that was discovered on the site? 3 A. No. 4 Q. And did you discover this construction debris in 5 each of the excavation areas performed by Mattuchio 6 on site? 7 A. Yes. 8 Q. What, if any, determination or decision did you 9 make at that time as a result of those 10 observations? 11 A. I called my office, and it wouldn't be my 12 determination to shut down the job, or that would 13 be strictly up to my office. 14 Q. And at that time, what, if any, concerns did you 15 have about your ability to build a building on the 16 site? 17 A. My concerns were you're not going to build a 18 building like that on that material, not a spread 19 footing foundation building. 20 Q. Why not? 21 A. It wouldn't bear the weight that it needs to hold 22 the building. 23 Q. Well, why wouldn't it bear the weight, to your 24 understanding?</p>

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<p>106</p> <p>1 A. Voids, voids mostly, air pockets, and where</p> <p>2 everything is just thrown in there, you would have</p> <p>3 a lot of voids.</p> <p>4 Q. To your knowledge, had the excavation that you now</p> <p>5 described, had already taken place prior to the</p> <p>6 meeting on April 9th at the site?</p> <p>7 A. Say that again.</p> <p>8 Q. As of the time that you had the meeting on April</p> <p>9 9th, 2004 with Mr. Gateman and I believe with</p> <p>10 Mr. Hawkins, had these excavation pits already been</p> <p>11 dug?</p> <p>12 A. Oh, yes.</p> <p>13 Q. Can you describe what you did, if anything, with</p> <p>14 Mr. Gateman while you were on the site on April 9th</p> <p>15 -- did you walk the site with him?</p> <p>16 A. Yes, we did.</p> <p>17 Q. And what, if anything -- what areas of the site did</p> <p>18 you walk?</p> <p>19 A. We walked pretty much where the building footprint,</p> <p>20 where all the test holes were dug.</p> <p>21 Q. And what, if anything, was -- what did you do?</p> <p>22 Were you pointing anything out? What was your role</p> <p>23 at this point?</p> <p>24 A. I basically was letting James discuss the problem</p>	<p>108</p> <p>1 Q. With respect to the building plans as they then</p> <p>2 existed, why did you make any determinations if all</p> <p>3 of the debris would have to be removed?</p> <p>4 A. We had basically all of the structural steel on</p> <p>5 site for that building. The building was bought.</p> <p>6 I don't believe it would have been cheaper on</p> <p>7 anybody's pocket to go to a pile cap and basically</p> <p>8 trying to conceal this, capsule it and build a</p> <p>9 building on top of it.</p> <p>10 Q. And what, if anything, did you say to Mr. Hawkins</p> <p>11 about that subject?</p> <p>12 A. I told him you could probably build a building on</p> <p>13 it doing pile caps and everything like that, but</p> <p>14 when it came down to doing all your plumbing and</p> <p>15 all your electrical, anything like that, it would</p> <p>16 all have to come out. They would never let you run</p> <p>17 pipes or anything like that in that kind of debris.</p> <p>18 Q. And what, if any, recommendation did you make to</p> <p>19 Mr. Hawkins at that time about whether the debris</p> <p>20 should or shouldn't come out?</p> <p>21 A. I don't remember making any to him about -- I think</p> <p>22 -- I might have said that it should come out, but</p> <p>23 that's not for me to decide.</p> <p>24 Q. Okay. And then did you have a second meeting on</p>
<p>107</p> <p>1 with the prior owner. They asked me if there was</p> <p>2 any other way to build it, could you build it on</p> <p>3 that material?</p> <p>4 Q. And what was your response?</p> <p>5 A. No, not legally.</p> <p>6 Q. And did you see Mr. Gateman observe these</p> <p>7 excavation pits? Did he look at them with you?</p> <p>8 A. Yes.</p> <p>9 Q. And what was his reaction?</p> <p>10 A. He seemed surprised.</p> <p>11 Q. And what, if anything, did he say?</p> <p>12 A. I can't remember right off. I know the question</p> <p>13 did arise, I can't remember if it was either from</p> <p>14 him or James, about, you know, maybe pounding piles</p> <p>15 and pile caps to support the building, asking how</p> <p>16 much of that we could leave.</p> <p>17 Q. Is that something you recall Mr. Gateman saying?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. And what was your response?</p> <p>20 A. I didn't believe any of it could stay.</p> <p>21 Q. Why?</p> <p>22 A. As far as building the building another way, then I</p> <p>23 would have to go back to the design structural</p> <p>24 engineers.</p>	<p>109</p> <p>1 the site within a few days of the April 9th</p> <p>2 meeting?</p> <p>3 A. I believe I did.</p> <p>4 Q. Do you recall who attended that meeting?</p> <p>5 A. I think it was with Robert Dismantling.</p> <p>6 Q. And I'd like to direct your attention to the third</p> <p>7 page of Exhibit No. 29. Can you identify what the</p> <p>8 notes are that appear below the April 14th date?</p> <p>9 A. What was your question again?</p> <p>10 Q. Can you identify what the notes are that appear on</p> <p>11 the third page of Exhibit 29 appearing below the</p> <p>12 April 14th date?</p> <p>13 A. I believe that's from one of my job reports.</p> <p>14 Q. Does this appear to be a typewritten version of</p> <p>15 notes that you made?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. Have you had a chance to read through -- I</p> <p>18 believe it's three paragraphs that appear below the</p> <p>19 April 14th date?</p> <p>20 A. Yes.</p> <p>21 Q. All right. Can you tell me what took place on the</p> <p>22 April 14th meeting? Who was there, and what was</p> <p>23 said to the best of your recollection?</p> <p>24 A. On April 14th?</p>

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<p style="text-align: right;">110</p> <p>1 Q. Yes.</p> <p>2 A. That was just me -- I don't quite remember the</p> <p>3 guy's name. It was Roberts Dismantling's</p> <p>4 representative.</p> <p>5 Q. Do you recall whether the gentleman had blond hair?</p> <p>6 A. I don't recall.</p> <p>7 Q. What, if anything, did you do with the</p> <p>8 representative from Roberts on the site on</p> <p>9 April 14th?</p> <p>10 A. We had discussed who was going to take out the</p> <p>11 construction debris.</p> <p>12 Q. Did you walk the site?</p> <p>13 A. Yes.</p> <p>14 Q. Did you show the representative from Roberts the</p> <p>15 excavation pits that had been dug by Mr. Mattuchio?</p> <p>16 A. Yes.</p> <p>17 Q. Can you describe what his reaction was?</p> <p>18 A. He wasn't surprised at all.</p> <p>19 Q. And what caused you to form the conclusion that he</p> <p>20 did not appear surprised?</p> <p>21 A. He told me right out that whatever is left in</p> <p>22 there, he was told to leave in there.</p> <p>23 Q. Did he tell you who told him to leave it in there?</p> <p>24 A. Bill Gateman, the prior owner.</p>	<p style="text-align: right;">112</p> <p>1 the site?</p> <p>2 A. It lined right up with what Robert Dismantling was</p> <p>3 saying. Apparently there was an old brick building</p> <p>4 that had burned, a lot of brick, a lot of ashes, a</p> <p>5 lot of pipes, wood.</p> <p>6 Q. When you refer to "wood," can you describe</p> <p>7 generally the type of wood that you saw?</p> <p>8 A. Old timbers, old framing material.</p> <p>9 Q. Approximately what were the dimensions of this wood</p> <p>10 that you saw? What sizes are we talking about?</p> <p>11 A. The majority of them went over three feet long,</p> <p>12 maybe a four-inch by four-inch size.</p> <p>13 Q. And what, if any, discussions did you have with a</p> <p>14 gentleman from Roberts about whether they would</p> <p>15 remove the demolition debris from the site?</p> <p>16 A. They said absolutely not.</p> <p>17 Q. Did you ever have any discussions with Mr. Gateman</p> <p>18 about whether he would remove the demolition</p> <p>19 debris?</p> <p>20 A. Yes.</p> <p>21 Q. And what did he say?</p> <p>22 A. He told me it was Roberts Dismantling's problem.</p> <p>23 Q. Did he say anything else with respect to that</p> <p>24 subject?</p>
<p style="text-align: right;">111</p> <p>1 Q. What, if any, discussion with the representative</p> <p>2 from Roberts did you have about the extent or scope</p> <p>3 of the demolition debris on the property?</p> <p>4 A. He told me the ramp that was left -- I guess there</p> <p>5 was a 60,000-square foot building that had burned.</p> <p>6 The majority of it was taken out, but there was a</p> <p>7 ramp that was left. That ramp he was told to</p> <p>8 leave.</p> <p>9 Q. Did he tell you who told him to leave it?</p> <p>10 A. He said Bill Gateman said to leave the ramp which</p> <p>11 he did, and he also said that that property had</p> <p>12 been split up; the dollar store had bought a lot,</p> <p>13 and that ramp did extend onto that lot, and then he</p> <p>14 was told by Bill Gateman to remove the ramp from</p> <p>15 that lot and put it onto this lot.</p> <p>16 Q. Okay. And by "this lot," what are you referring</p> <p>17 to?</p> <p>18 A. Union Street, 200 Union Street.</p> <p>19 Q. And are you referring to the lot on which you were</p> <p>20 going to be building a building?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. And what, if any, understanding did you have</p> <p>23 as a result of that conversation about what the</p> <p>24 source was of the debris that you were finding on</p>	<p style="text-align: right;">113</p> <p>1 A. Not that I recall.</p> <p>2 Q. And did the individual from Roberts give you any</p> <p>3 kind of a price quote on what it would cost for him</p> <p>4 to remove the debris?</p> <p>5 A. Yes. I think it was -- he gave us a tonnage fee</p> <p>6 that didn't include excavation. I'm not even quite</p> <p>7 sure if it included chalking. I think it was just</p> <p>8 a per ton fee.</p> <p>9 Q. Do you recall what per ton fee he gave you?</p> <p>10 A. I think it was like 60 bucks.</p> <p>11 Q. What did you then next do after April 14th in</p> <p>12 connection with the site?</p> <p>13 A. We had left the site. I believe after that meeting</p> <p>14 I had with him, we were off site for probably at</p> <p>15 least four to six weeks.</p> <p>16 Q. Do you have any understanding why you were off site</p> <p>17 during that time?</p> <p>18 A. It was my understanding that James was trying to</p> <p>19 work out how he was going to be able to build his</p> <p>20 building with the prior owner.</p> <p>21 Q. Okay. Do you recall approximately when in relation</p> <p>22 to that April 14th meeting when you next came back</p> <p>23 on the site?</p> <p>24 A. I would say at least four to six weeks.</p>

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114	<p>1 Q. And what did you then next do at that time?</p> <p>2 A. When we came back on site, we started excavating to</p> <p>3 get all the rubble out.</p> <p>4 Q. And as of that time, had you ever met with an</p> <p>5 individual by the name of Chad Michaud from S.W.</p> <p>6 Cole?</p> <p>7 A. I think we did. I think we had a -- I can't</p> <p>8 remember, to tell you the truth.</p> <p>9 Q. Do you have any recollection of having any meetings</p> <p>10 with an individual from S.W. Cole to examine the</p> <p>11 excavation pits before any debris was removed?</p> <p>12 A. I don't remember doing that with S.W. Cole. I</p> <p>13 don't.</p> <p>14 Q. At some point in time, you returned to this -- let</p> <p>15 me rephrase the question, I believe you testified</p> <p>16 four to six weeks after the April 14th meeting, you</p> <p>17 came back to the site for what purpose?</p> <p>18 A. We were going to start again on the site. We were</p> <p>19 going to take all the materials out.</p> <p>20 Q. And at that point in time, who else from PM was on</p> <p>21 site, if anybody?</p> <p>22 A. On the day we started again?</p> <p>23 Q. Yeah.</p> <p>24 A. It would have been Richard Pearl.</p>	116	<p>1 building.</p> <p>2 Q. When you say "the building," are you referring now</p> <p>3 to the building that would be built?</p> <p>4 A. Yes.</p> <p>5 Q. And you're referring to the slab area being the</p> <p>6 slab of the prior building?</p> <p>7 A. Yes.</p> <p>8 Q. And I believe you testified earlier that they did</p> <p>9 not excavate below the slab; is that correct?</p> <p>10 A. No, we did not.</p> <p>11 Q. Directing your attention to the slab area portion</p> <p>12 of the site?</p> <p>13 A. Mm-hmm.</p> <p>14 MR. ROBBINS: Is that the buried part --</p> <p>15 MR. KERESTER: It's the three to</p> <p>16 four-inch --</p> <p>17 MR. ROBBINS: Okay. The historical one,</p> <p>18 if you will?.</p> <p>19 MR. KERESTER: The three to four-inch</p> <p>20 slab that was the need for the demolition debris.</p> <p>21 MR. ROBBINS: Okay.</p> <p>22 Q. Can you describe generally what was the process by</p> <p>23 which the debris was removed? How did it take</p> <p>24 place? Where was the excavator located? Whatever</p>
115	<p>1 Q. And did you stay on site for each of the days in</p> <p>2 which demolition debris was removed from the site?</p> <p>3 A. Yes.</p> <p>4 Q. Was that work done on a daily basis during the</p> <p>5 workweek?</p> <p>6 A. Yes.</p> <p>7 Q. This is, like, Monday through Friday generally?</p> <p>8 A. Five days a week, yeah, Monday through Friday.</p> <p>9 Q. And were you there during the entire time that the</p> <p>10 excavation of the demolition debris was conducted</p> <p>11 at the site?</p> <p>12 A. Yes.</p> <p>13 Q. Was Mr. Pearl also there during that time?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And what was your role with respect to the</p> <p>16 removal of the demolition debris?</p> <p>17 A. I was monitoring trucks, making sure they were</p> <p>18 full.</p> <p>19 Q. Can you describe generally what excavation work was</p> <p>20 done with respect to the demolition debris at the</p> <p>21 site?</p> <p>22 A. They basically took all the construction demo out</p> <p>23 throughout the whole slab area, which was pretty</p> <p>24 much a little bit bigger than the footprint of the</p>	117	<p>1 equipment was used?</p> <p>2 A. He basically used an excavator and a 30-yard</p> <p>3 tractor-trailer dump truck.</p> <p>4 Q. And was this work performed by Mattuchio?</p> <p>5 A. Yes.</p> <p>6 MR. ROBBINS: Do you mean the Mattuchio</p> <p>7 Company or Mr. Mattuchio himself?</p> <p>8 MR. KERESTER: We're referring to the</p> <p>9 company.</p> <p>10 THE WITNESS: Mattuchio Corporation.</p> <p>11 Q. Corporation. Okay. Thank you.</p> <p>12 And who at Mattuchio was performing this</p> <p>13 excavation work?</p> <p>14 A. I do not know the name of his operator. He had a</p> <p>15 superintendent on site, which was Giovanni Rossi.</p> <p>16 Q. Was Mr. Rossi generally also on site during the</p> <p>17 time that the demolition debris was removed?</p> <p>18 A. Yes.</p> <p>19 Q. Directing your attention to Exhibit No. 58. I give</p> <p>20 you a yellow highlighter. Can you identify through</p> <p>21 the use of the highlighter the area where the</p> <p>22 demolition debris was removed?</p> <p>23 MR. ROBBINS: Before he starts, is that</p> <p>24 going to show up on the photocopy, do you think?</p>

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<p>1 If not, maybe I can find something else.</p> <p>2 MR. KERESTER: Yeah. Why don't we go off</p> <p>3 the record for a moment.</p> <p>4 (Discussion held off the record.)</p> <p>5 Q. Using the red pen, can you identify the parameter</p> <p>6 of the area from which the demolition debris was</p> <p>7 removed?</p> <p>8 A. (Witness complies.)</p> <p>9 Q. And in addition, you've drawn a rectangle on</p> <p>10 Exhibit 58, correct?</p> <p>11 A. Mm-hmm.</p> <p>12 Q. You'll have to say yes or no for the stenographer.</p> <p>13 A. Yes.</p> <p>14 Q. All right. In addition, was there any other areas</p> <p>15 of the site where there also was some excavation of</p> <p>16 demolition debris?</p> <p>17 A. There was a little bit of debris in here, but</p> <p>18 nothing really to worry about.</p> <p>19 Q. Where are you identifying?</p> <p>20 A. Which would be the back side of the lot towards</p> <p>21 Ellis Street.</p> <p>22 Q. Okay. I believe you testified earlier that the</p> <p>23 excavation in the area now that you've identified</p> <p>24 with a red rectangle was done with a depth of</p>	<p>1 rectangle could stay on site rather than be</p> <p>2 removed?</p> <p>3 A. To me, it would all have to be removed, but that</p> <p>4 wouldn't be for me to -</p> <p>5 Q. Do you know approximately how long it took for the</p> <p>6 demolition debris to be removed?</p> <p>7 A. To be removed, I believe it was two to three weeks.</p> <p>8 Q. And approximately how many trucks were being used</p> <p>9 as part of this process?</p> <p>10 A. If I recall, there was 167, 30-yard trailer dumps.</p> <p>11 Q. That's the number of truckloads of debris that was</p> <p>12 removed?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. And did you observe each of these truckloads</p> <p>15 being filled?</p> <p>16 A. Yes.</p> <p>17 Q. And did you observe each of these truckloads being</p> <p>18 removed?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. To the best of your understanding, how many</p> <p>21 truckloads of the demolition debris material was</p> <p>22 removed from the site?</p> <p>23 A. I believe it was 167.</p> <p>24 Q. To your knowledge, of the 167 truckloads, did that</p>
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<p>1 between 12 to 14 feet; is that correct?</p> <p>2 A. I believe so, yes.</p> <p>3 Q. Is that 12 to 14 feet below the grade of this</p> <p>4 street approximately?</p> <p>5 A. Yes.</p> <p>6 Q. Can you tell me what you observed with respect to</p> <p>7 the removal of the debris? What did you see being</p> <p>8 removed as this work was taking place?</p> <p>9 A. A lot of charred ashes, looked like wood, burnt</p> <p>10 wood; lot of bricks; lot of cast iron piping; lot</p> <p>11 of steel piping; lot of concrete. I remember</p> <p>12 seeing one radiator and one cash draw, and there</p> <p>13 was a file cabinet down in there.</p> <p>14 Q. And was this debris, as you've now described it,</p> <p>15 located throughout the rectangle that you've now</p> <p>16 identified in red pen on Exhibit 58?</p> <p>17 A. Yes.</p> <p>18 Q. Did you make any determination while the work was</p> <p>19 taking place as to whether any of the existing</p> <p>20 material within that rectangle could remain on site</p> <p>21 and did not need to be removed?</p> <p>22 A. Say it again.</p> <p>23 Q. Did you make any determination as to whether any of</p> <p>24 the material that you found within the red</p>	<p>1 all generally come from the -- let me rephrase the</p> <p>2 question, directing your attention to the 167</p> <p>3 truckloads, did all of that material come from</p> <p>4 within the red rectangle that you've drawn on</p> <p>5 Exhibit 58?</p> <p>6 A. Yes. With the exception of maybe one truckload</p> <p>7 right here on this concrete wall.</p> <p>8 Q. Okay. Can you draw with a red pen where that</p> <p>9 additional material was removed from?</p> <p>10 A. (Witness complies.)</p> <p>11 Q. What happened next after the debris was removed?</p> <p>12 A. We started bringing in fill.</p> <p>13 Q. What type of fill was brought in?</p> <p>14 A. It was labeled as urban fill.</p> <p>15 Q. And can you describe what it looked like?</p> <p>16 A. A lot of gravel, concrete chunks, brick chunks,</p> <p>17 smaller -- I wouldn't say any rock sizes bigger</p> <p>18 than three quarters of an inch.</p> <p>19 Q. Okay. So when you say "concrete and brick," what</p> <p>20 was the size of those materials that you saw?</p> <p>21 A. No bigger than three quarters of an inch.</p> <p>22 Q. And is it your understanding that that material had</p> <p>23 been processed in some way?</p> <p>24 A. Yes.</p>

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<p>122</p> <p>1 Q. And what, if any, understanding do you have about</p> <p>2 whether brick and concrete is required to be</p> <p>3 processed in some way before it can be left on site</p> <p>4 where a building can be constructed?</p> <p>5 MR. ROBBINS: Objection.</p> <p>6 Q. You can answer.</p> <p>7 A. As a general rule if -- I'd say if you stack bricks</p> <p>8 in the ground, bury them, you'd probably be fine.</p> <p>9 If you throw them in a heap, it makes voids.</p> <p>10 Eventually the earth falls into those voids,</p> <p>11 leaving a void up above.</p> <p>12 Q. And is that a problem?</p> <p>13 A. Yes.</p> <p>14 Q. And why's that?</p> <p>15 A. Then you wouldn't have the proper support for your</p> <p>16 footings. You basically wouldn't have any ground</p> <p>17 under your footings.</p> <p>18 Q. And how and why is that a problem?</p> <p>19 A. That's basically what holds up your buildings if</p> <p>20 you're on spread footings.</p> <p>21 Q. At some point in time, did you review any of the --</p> <p>22 let me rephrase the question, did Mattuchio ever</p> <p>23 provide you any paperwork with respect to the</p> <p>24 removal of the demolition debris, trucking slips or</p>	<p>124</p> <p>1 Q. Does Exhibit 49C contain any copies of the slips</p> <p>2 provided to you by Mattuchio?</p> <p>3 A. Yes.</p> <p>4 Q. And can you identify generally what those look</p> <p>5 like?</p> <p>6 A. When I received them, they were pink copies.</p> <p>7 Q. Okay. So you saw the originals of what's now</p> <p>8 reflected in Exhibit 49C?</p> <p>9 A. Yes.</p> <p>10 Q. And did you review those on a daily basis?</p> <p>11 A. Yes.</p> <p>12 Q. And as a result of that review and your monitoring</p> <p>13 of the number of trucks that were filled each day,</p> <p>14 did you make a determination as to how many</p> <p>15 truckloads of demolition debris material was</p> <p>16 removed?</p> <p>17 A. A day?</p> <p>18 Q. No, in total.</p> <p>19 A. Yeah. I thought it was around 165 to 179. I</p> <p>20 believe the number was 167.</p> <p>21 Q. And did you make that determination on the basis of</p> <p>22 your personal observations and your review of the</p> <p>23 trucking slips provided to you by Mattuchio?</p> <p>24 A. Yes.</p>
<p>123</p> <p>1 otherwise?</p> <p>2 A. Yes. I had trucking slips every day.</p> <p>3 Q. Okay. And did you review those?</p> <p>4 A. Yes.</p> <p>5 Q. Were those provided to you on a daily basis?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. What, if anything, did you do in connection</p> <p>8 with those slips in relation to your monitoring of</p> <p>9 the work that was being done?</p> <p>10 A. Those slips, I would give to my office weekly.</p> <p>11 Q. And did you do anything else in terms of review of</p> <p>12 the slips in connection with your monitoring of the</p> <p>13 work that they had done?</p> <p>14 A. I basically counted trucks and made sure they were</p> <p>15 full when they left the site.</p> <p>16 Q. In fact, did you do that on a daily basis?</p> <p>17 A. Yes.</p> <p>18 Q. And I'm going to show you what's been marked as</p> <p>19 Exhibit 49C, and ask if you can tell me whether any</p> <p>20 of those slips are contained within Exhibit 49C?</p> <p>21 And I'll represent that these are documents that</p> <p>22 were produced by your office in response to a</p> <p>23 subpoena issued by Mr. Robbins.</p> <p>24 A. What was the question again?</p>	<p>125</p> <p>1 Q. All right. Do the trucking slips that are</p> <p>2 contained in Exhibit 49C, appear to be true and</p> <p>3 accurate copies of the trucking slips that you</p> <p>4 reviewed that was provided to you by Mattuchio?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. Can you tell me what you did in terms of</p> <p>7 monitoring whether a truck load was or wasn't full</p> <p>8 before it was removed?</p> <p>9 A. Generally, you could count the bucket. Sometimes</p> <p>10 depending if you got into long pipes or -- but most</p> <p>11 of the times, you could see it heaping from the</p> <p>12 rails of the body of the truck.</p> <p>13 Q. And did you generally monitor -- what, if anything,</p> <p>14 did you do in order to determine whether the trucks</p> <p>15 were or were not full before they left?</p> <p>16 A. Say that again.</p> <p>17 Q. Yeah. What, if anything, did you do to make sure</p> <p>18 that the trucks were fully loaded before being</p> <p>19 removed?</p> <p>20 A. I told Mattuchio Corporation we would not pay for</p> <p>21 any trucks that weren't full when they left the</p> <p>22 site.</p> <p>23 Q. Did you make any observations of the truckloads as</p> <p>24 they were removed?</p>

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<p style="text-align: right;">126</p> <p>1 A. Yes. They were all full.</p> <p>2 Q. Do you have any understanding as to approximately</p> <p>3 how many yards worth of material was of the</p> <p>4 demolition debris was removed from the site?</p> <p>5 A. I don't. I want to say around 4,000.</p> <p>6 Q. When the material was removed from the site and</p> <p>7 then placed into the truck, would you describe that</p> <p>8 it was more or less compact than it had been when</p> <p>9 it was in the site?</p> <p>10 A. Oh, yeah. No, it's less.</p> <p>11 Q. And why is that?</p> <p>12 A. It gets disturbed. It gets air in it. When you</p> <p>13 dump it, if there's a pipe, you know, you're not</p> <p>14 putting a compactor on it when it's in the back of</p> <p>15 a truck. If there's a pipe leaning on the wall a</p> <p>16 little bit, it's going to make a little void.</p> <p>17 Q. If you had made some determination about the cubic</p> <p>18 yards of the area that would be the subject of the</p> <p>19 debris removal, would you expect that the cubic</p> <p>20 yards of the truckloads would be greater or less</p> <p>21 than the cubic yards of the area from which the</p> <p>22 debris was removed?</p> <p>23 MR. ROBBINS: Objection.</p> <p>24 A. You would bring in more, I believe. Can you say</p>	<p style="text-align: right;">128</p> <p>1 Q. Was there any geotechnical engineer on site during</p> <p>2 any of this process?</p> <p>3 A. Yes, there was.</p> <p>4 Q. Do you recall who that was?</p> <p>5 A. I believe it was S.W. Cole.</p> <p>6 Q. Is it possible it might have been a firm other than</p> <p>7 S.W. Cole?</p> <p>8 A. It could have been.</p> <p>9 Q. Are you familiar with an entity by the name of</p> <p>10 Geotechnical Services?</p> <p>11 A. Yes, I am.</p> <p>12 Q. Do you know whether they had any role in connection</p> <p>13 with the site?</p> <p>14 A. Yeah. I believe that may have been who it was.</p> <p>15 Q. Okay. Is it your understanding there was somebody</p> <p>16 from Geotechnical Services who performed some</p> <p>17 geotechnical role in connection with the fill that</p> <p>18 was being put back on the site?</p> <p>19 A. Yes.</p> <p>20 Q. And what, if any, role did they have in connection</p> <p>21 with the cracking of the slab and any testing of</p> <p>22 the material below the slab?</p> <p>23 A. Mattuchio Corporation fractured the slab, which was</p> <p>24 advised through the Geotechnical Services just for</p>
<p style="text-align: right;">127</p> <p>1 that again?</p> <p>2 Q. In other words, for example, let's say that the</p> <p>3 area from which the debris material was being</p> <p>4 removed was 3,000 cubic yards, would you expect</p> <p>5 that you would have more or less than 130 cubic</p> <p>6 yard truckloads in order to remove that material?</p> <p>7 A. If it had been there for a while?</p> <p>8 Q. Yes.</p> <p>9 A. You would have more.</p> <p>10 Q. And why is that?</p> <p>11 A. Overtime, water especially compacts. Even, you</p> <p>12 know, it will take dirt, and it will fill the voids</p> <p>13 basically.</p> <p>14 Q. What happened next after the debris was removed? I</p> <p>15 believe you said fill was brought in?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. What was your role in connection with the</p> <p>18 fill being brought in?</p> <p>19 A. My role was to supervise the fill being brought in,</p> <p>20 make sure it was being spread in 12-inch lifts and</p> <p>21 compacted to at least 95 percent of its dry</p> <p>22 density.</p> <p>23 Q. And did you in fact do that?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">129</p> <p>1 drainage properties most of all. When the slab was</p> <p>2 fractured, to be on the safe side, we did a density</p> <p>3 test under the slab.</p> <p>4 Q. And was it somebody from Geotechnical Services that</p> <p>5 performed that density test?</p> <p>6 A. Yes.</p> <p>7 Q. And was there any of the material below the slab</p> <p>8 that was removed, to your knowledge?</p> <p>9 A. No.</p> <p>10 Q. Did you make any determination as to how much of</p> <p>11 the fill material was brought onto site?</p> <p>12 A. I believe it was around 4,000 yards.</p> <p>13 Q. Okay. And how did you arrive at that</p> <p>14 determination?</p> <p>15 A. I just -- I think I remember seeing a change order</p> <p>16 from Mattuchio Corporation.</p> <p>17 Q. And what, if anything, did you do in connection</p> <p>18 with monitoring the delivery of fill onto the site?</p> <p>19 A. Again, looking for fill -- full trucks and keeping</p> <p>20 a tab on how many yards were brought in, which I'm</p> <p>21 not sure on the way they brought it in, if they did</p> <p>22 it by the ton or by the yard, that would have been</p> <p>23 handled through my office.</p> <p>24 Q. Were you provided with any of the slips, daily</p>

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1	slips, in connection with the delivery of the fill	1	that individual was present?
2	to the site?	2	A. He was there every day we were bringing the site up
3	A. Not when it was brought in, no.	3	to grade until we got to grade.
4	Q. Were you at some later point in time?	4	Q. I don't have any further questions. Thank you very
5	A. No. That all went directly to the office.	5	much.
6	Q. Do you know if anybody else at PM had some role in	6	MS. ENGBERG: I don't have any questions.
7	terms of the review of the slips for the delivery	7	MR. ROBBINS: I have a couple actually
8	of the fill?	8	that came to me that I think I didn't ask you.
9	A. I don't know. If anybody, it would have been	9	EXAMINATION
10	George LaPlume.	10	BY MR. ROBBINS:
11	Q. He was the project manager?	11	Q. Have you ever supervised a construction project
12	A. Yes.	12	where there was a basement installed in the
13	Q. Do you recall ever reviewing slips reflecting the	13	building or a basement was dug, and it was not a
14	amount of fill material delivered to the site?	14	slab on grade?
15	A. The number 4,000 just keeps popping in my head for	15	A. Yes.
16	some reason. I know I saw it somewhere. I don't	16	Q. Okay. And I'm sure it's obvious, but in order to
17	know if it was all invoiced on one slip, or if it	17	put a basement underneath a building, you have to
18	was a multiple number. I don't know. I'm not	18	dig a hole, right?
19	sure.	19	A. Yes.
20	Q. Was it your understanding that approximately 4,000	20	Q. Okay. Had this building that you were suppose to
21	cubic yards were delivered to the site?	21	put on this site had a basement, okay?
22	A. Yes.	22	A. Mm-hmm.
23	Q. And is that understanding consistent or	23	Q. You would have had to have dug out what you ended
24	inconsistent with your observations of the trucks	24	up digging out in order to put the basement in; is
131		133	
1	bringing the fill in?	1	that right?
2	A. Say that again now?	2	A. Mm-hmm.
3	Q. In other words, you monitored the trucks delivering	3	Q. You have to say yes or no.
4	the fill, correct?	4	A. Yes.
5	A. Yes.	5	Q. Were you able to from your test pits -- strike
6	Q. As a result of that monitoring work, did you form	6	that.
7	any understanding as to whether in fact there was	7	Let me go back to something over here,
8	4,000 or less than 4,000 cubic yards of fill	8	this drawing, 58. You indicated that part of the
9	delivered to the site?	9	167, 30 cubic yard loads that were removed, one of
10	A. I thought it was right around 4,000.	10	them you thought contained this portion of the
11	Q. Did you have any roles in connection with the	11	buried foundation wall that you've drawn this sort
12	solicitation of bids to do the excavation work --	12	of letter shape "L" around; is that right?
13	A. No.	13	A. Yes. It contained a certain part of it. I believe
14	Q. -- of the debris?	14	it was at least -- it was around one foot on the
15	A. No.	15	top to maybe a foot and a half down to here. We
16	Q. Did you have any roles in determineing the price to	16	did not take that whole foundation out.
17	be paid for the removal of the demolition debris in	17	Q. Okay. That's where I'm going.
18	replacement of with the fill?	18	So part of this foundation that's in this
19	A. No.	19	"L" shape was removed in that load?
20	Q. I believe you testified there was an individual	20	A. Yes.
21	from Geotechnical Services on the site while the	21	Q. Were any of the other foundation elements, which
22	filling was taking place; is that right?	22	you have these hash marks on them that you have
23	A. Yes.	23	drawn, part of those 167 loads?
24	Q. Do you know approximately how many days on the site	24	MR. KERESTER: Objection to form.

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<p style="text-align: right;">134</p> <p>1 A. Yes, they were. But they were separated. They 2 were taken all as their own loads. The concrete 3 was taken with the concrete. 4 Q. Okay. So while the demolition of those concrete 5 walls was accomplished, you're saying that the 6 disposal of that was not part of the 167 loads? 7 A. I believe it was, but it was in its own truckload 8 forms. It wasn't mixed with the brick or the 9 pipes. 10 Q. Okay. I'm a little confused. Was it a load or a 11 few loads in addition to the 167? 12 A. No. It was included in that. 13 Q. Included in there? 14 A. Yes. It was included in the whole package. It was 15 just taken out in its own truck. 16 Q. Okay. And do you remember when that happened, it 17 was taken out in its own truck? 18 A. That was -- I believe it was after the majority of 19 the construction debris inside this area was gone. 20 Q. Okay. And do you remember whether it was one or 21 more than one truck that it filled up on those 22 loads? 23 A. I can't remember exactly how many trucks. 24 Q. Was it more than one though?</p>	<p style="text-align: right;">136</p> <p>1 ashes up in the front than there was in the back. 2 Q. Okay. 3 A. But, otherwise, the material was largely the same 4 throughout, yes. 5 Q. Okay. And when you spoke with the person from 6 Roberts, did they indicate what they meant by ramp 7 or where this so called ramp was? 8 A. He said the ramp was on the backside of this 9 foundation extending into the proposed building 10 area. 11 Q. Okay. And I'm trying to understand where you're 12 indicating. So you're talking about from the -- it 13 would have included the part of the foundation you 14 labeled number four? 15 A. Yes. 16 Q. And that was to provide for vehicles doing what? 17 A. I believe it was for equipment coming in and out of 18 the hole. 19 Q. The hole being toward Union Street? 20 A. Yes. 21 Q. Towards where this Aaron Store eventually ended up 22 being built? 23 A. Yes. 24 Q. And did he indicate what part of it was removed</p>
<p style="text-align: right;">135</p> <p>1 A. Probably, yeah. 2 Q. Okay. Was that, as far as you understood, concrete 3 removed because it somehow would have interfered 4 with the construction of this building? 5 A. The concrete? 6 Q. Mm-hmm. 7 A. Yes. 8 Q. So those concrete walls, would have interfered with 9 the solidity of the ground and the compactness of 10 the ground for purposes of putting up this 11 building? 12 A. Yes. 13 Q. Okay. Were you ever able to understand that the 14 debris that you have referred to was distributed in 15 any particular pattern on this site? Was it in a 16 row? In a circle? In a certain area evenly 17 distributed throughout or something else? 18 A. Say that again now. 19 Q. I'm trying to understand from you if you ever were 20 able to figure out was the debris that you found 21 located in certain piles in a row or in some other 22 organization? 23 A. No. It was throughout pretty good. The only thing 24 that was probably different was there was more</p>	<p style="text-align: right;">137</p> <p>1 from the Family Dollar Store? 2 A. He just said the ramp. The ramp that was -- he was 3 instructed to leave. 4 Q. I see. I have no other questions. Thank you. 5 MR. KERESTER: I just have a couple of 6 quick follow-up questions. 7 EXAMINATION 8 BY MR. KERESTER: 9 Q. Directing your attention to Exhibit 58, what 10 portion of the existing foundation was removed? 11 A. I believe we took on walls one, four. This one we 12 took enough to get down to subgrade, which would 13 have been a foot. 14 Q. You're referring to the one that's surrounded by a 15 red rectangle shape? 16 A. Yes. 17 Q. And that was removed down to approximately one 18 foot; is that right? 19 A. One foot below whatever grade needed to be there. 20 So I think it ended up being about a foot on this 21 end, maybe a foot and a half on this end. 22 Q. Approximately what's the length of that foundation 23 that was removed? 24 A. It should be, like, 60, 70 feet anyway.</p>

35 (Pages 134 to 137)

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1	And then the other foundations basically	1	ERRATA SHEET DISTRIBUTION INFORMATION
2	we took down to -- I think we went a foot below	2	DEPONENT'S ERRATA & SIGNATURE INSTRUCTIONS
3	what bottom of footing would have been.	3	
4	Q. And the foundations were then broken up and then	4	ERRATA SHEET DISTRIBUTION INFORMATION
5	removed; is that right?	5	The original of the Errata Sheet has been
6	A. Yes.	6	delivered to James S. Robbins, Esquire.
7	Q. Would that have been less than approximately ten	7	When the Errata Sheet has been completed
8	loads worth of trailer loads to remove them?	8	by the deponent and signed, a copy thereof should
9	A. Oh, yeah.	9	be delivered to each party of record.
10	Q. Would it have been less than five?	10	
11	A. Yeah. It probably would have been around five,	11	INSTRUCTIONS TO DEPONENT
12	five tops probably.	12	After reading this volume of your
13	Q. I have no further questions.	13	deposition, please indicate any corrections or
14	MR. ROBBINS: I'm going to give him the	14	changes to your testimony and the reasons therefor
15	last word unless you --	15	on the Errata Sheet supplied to you and sign it.
16	MS. ENGBERG: No. I'm all set.	16	DO NOT make marks or notations on the transcript
17	MR. KERESTER: Thank you very much.	17	volume itself. Add additional sheet if necessary.
18	You're all set.	18	Please refer to the above instructions for errata
19	THE WITNESS: Thanks. I appreciate it.	19	sheet distribution information.
20	MR. ROBBINS: Counsel off the record with	20	
21	the witness have discussed the requirements for	21	
22	reviewing the deposition by the witness, and would	22	
23	like to have it read and signed, but not in front	23	
24	of a notary.	24	
139		141	
1	MS. ENGBERG: Right.	1	PLEASE ATTACH TO THE DEPOSITION OF STEVEN MCINTYRE
2	MR. KERESTER: That's fine.	2	DATE TAKEN: 12/01/2005
3	MR. ROBBINS: And if we do not receive	3	ERRATA SHEET
4	any changes before the expiration of 30 days after	4	Please refer to page 140 for errata sheet
5	Mr. McIntyre gets the deposition transcript, it	5	instructions and distribution instructions.
6	will be treated as if he signed it as being	6	PAGE LINE CHANGE REASON
7	correct. Is that okay?	7	
8	MR. KERESTER: That's fine.	8	
9	MS. ENGBERG: Yes.	9	
10		10	
11	(Whereupon the Deposition of	11	
12	Steven McIntyre concluded at 2:05 p.m.)	12	
13		13	
14		14	
15		15	I have read the foregoing transcript of
16		16	my deposition and except for any corrections or
17		17	changes noted above, I hereby subscribe to the
18		18	transcript as an accurate record of the statements
19		19	made by me.
20		20	Executed this day of , 2005.
21		21	
22		22	
23		23	Steven McIntyre
24		24	

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1 CERTIFICATE

2
3 COMMONWEALTH OF MASSACHUSETTS

4
5
6 I, Elizabette M. Afonso, a Professional
7 Shorthand Reporter and Notary Public in and for the
8 Commonwealth of Massachusetts, do hereby certify
9 that the following transcript of the deposition of
10 Steven McIntyre, having been duly sworn, is true
11 and accurate to the best of my knowledge, skill,
12 and ability.

13 IN WITNESS WHEREOF, I have hereunto set
14 my hand and seal this 14th day of December, 2005.
15
16
17

18 Elizabette M. Afonso
19 Notary Public

20 My commission expires:
21 November 10, 2006
22
23
24

